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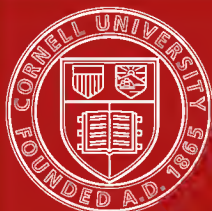


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STATE OF NEW YORK

PUBLIC PAPERS
OF
CHARLES E. HUGHES
GOVERNOR

1909

ALBANY
J. B. LYON COMPANY, PRINTERS
1910

A.25.0352

I

INAUGURATION

I

INAUGURATION

Governor Charles E. Hughes was re-elected in November, 1908, and on January 1, 1909, ceremonies were held in the Assembly Chamber of the State Capitol in Albany, inducting him into office. The proceedings began with prayer, after which Mr. Hughes took the oath of office. He then delivered his inaugural address. He said:

FELLOW CITIZENS:—The State of New York with its composite population and its varied interests presents difficult governmental problems, and yet by virtue of the acumen and public spirit of its citizens it should stand as an exemplar of just and efficient administration.

Here should be found the most approved methods of State government within its proper sphere. Our forests should be preserved and nurtured with scientific care. Our water powers should be developed for the suitable expansion of industry. Improved artificial waterways, supplementing our steel roads, should link our important ports and interior markets; and a network of highways, well-planned, well-constructed and properly maintained, should unite our cities and villages throughout the State and facilitate the carriage of our farm products. Agriculture should be encouraged by apt provision for diffusing the teachings of experience. Our streams should be free from pollution and the public health safeguarded by all practicable precautions. Public education should take due account of necessary preparation for useful living. Labor should be employed under fair conditions assuring due regard for health and safety. Our charities, our hospitals, our prisons should reflect the counsels of wise philanthropy and exhibit the most intelligent efforts for custodial care, cure, and reformation. Our processes for the settlement of disputes and the punishment of crime should display the least possible delays and the fewest technical obstructions consistent with opportunity for

fair hearing and proper deliberation. Our laws so far as possible should be general and not special. The charters of our cities should establish local responsibility for the details of administration, thus making each municipality a training school for the development of civic spirit. Our electoral machinery should be carefully safeguarded to assure uncorrupted expression of the popular will. And the supremacy of public right and the just exercise of public privilege should ever be enforced to the end that individual liberty should have its proper scope and that the common interest upon which the liberties of all ultimately depend should be secure against exploitation.

We may congratulate ourselves upon the gains which have been made and we may devote ourselves to these important tasks inspired by the work of the long line of faithful servants who through the generations have striven for the public good and have made possible our present attainments.

Within the limits of the Federal Constitution, the people of the State may have the government they desire. These limits leave the people free to administer their State affairs, the care of which has not been committed to the Federal government, so long as they maintain republican institutions and the common privileges of citizenship and act in accordance with the essential principles of justice embraced in the concept of due process of law. They are not subject to Federal restraint in perfecting State administration.

But they must act in accordance with their own fundamental rules. The people of the State have established their own Constitution which defines the sphere within which all public officers must act. Unhesitating obedience to its mandates and loyal recognition of its restrictions is the first law of our political being. Constitutional rule is the rule of the people, for the Constitution is the fundamental and direct expression of the people's will. It is not only a check upon representatives, but is an act of self renunciation, the voluntary pledge of a salutary conservatism. If they desire, the people may change it; but the change must be made in the prescribed manner, and until so changed the Constitution binds the people themselves and their official representatives, as expressive of

the deliberate policy which they have deemed it wise to protect from hasty alteration even at their own hands.

The powers of government are classified as executive, legislative, and judicial. While the propriety of avoiding their confusion so far as may be practicable is generally recognized, the people have a wide range of choice in the distribution of these powers and they are not and cannot well be separated with logical exactness with regard to the officers who exercise them.

Perhaps the judicial branch of the government is most closely confined to a single class of powers though in certain cases (and more conspicuously in other States than in our own) it is permitted administrative functions. We cannot too strongly emphasize the importance of proper respect for the authority of the courts as the arbiters of our judicial controversies. All rational progress must be based upon the maintenance of the fundamental principles of law and order and upon the support of the institutions for the peaceful settlement of conflicts over rights. And it is precisely for this reason that we may deprecate any attempt to involve the courts in questions which are essentially legislative or administrative, and where, in the absence of the invasion of constitutional guarantecs, the matter is one of policy and the judicial function properly speaking is not concerned.

The executive power is vested in the Governor, but he is also an important part of the lawmaking power of the State. This is through his power of veto. After the final adjournment of the Legislature he has absolute control of the bills left in his hands and none may become a law without his approval. During the legislative session he has a qualified veto, and despite it bills may become laws if two-thirds of the members of each House so vote in the face of his objections. The plain intent of the Constitution is that the Governor shall express his judgment upon legislative measures before him and that his judgment shall control unless the measure is so strongly supported that it counts in its favor two-thirds of the members of the legislative houses after his objections have formally been stated.

The Governor is also to recommend to the Legislature such matters "as he shall judge expedient." It is not his constitutional function to attempt by use of patronage or by bargaining with respect to bills to secure the passage of measures he approves. It is his prerogative to recommend and to state the reasons for his recommendation and, in common with all representative officers, it his privilege to justify his position to the people to whom he is accountable. And the more closely he confines himself to his province and discharges his responsibility within the limits assigned to him, the less confusion will there be in the working of our system and the more potent will be the sway of intelligent public opinion over those charged in their various offices with the duties of representation.

While the Governor represents the highest executive power in the State, there is frequently observed a popular misapprehension as to its scope. There is a wide domain of executive or administrative action over which he has no control, or slight control. There are several elected State officers, not accountable to the Governor, who exercise within their prescribed spheres most important executive powers. To the Comptroller and State Treasurer are confided administrative powers with respect to financial matters. The Attorney-General is charged with duties appropriate to the enforcement of public rights through legal machinery. The State Engineer and Surveyor has important powers with regard to the canal improvement and the only member of the Canal Board accountable to the Governor is the Superintendent of Public Works who has a limited authority. The Commissioners of the Land Office are independent of the Governor.

The multiplication of executive duties incident to the vast and necessary increase in State activities has resulted in the creation of a large number of departments exercising administrative powers of first consequence to the people. The Governor has the power of appointment, but in most cases the concurrence of the Senate is necessary. The terms of these officers are generally longer than the Governor's term. And in their creation the Legislature with few exceptions has

reserved final administrative control to the Senate in making the heads of departments, to whose appointment the Senate's consent is necessary, removable only by it.

Our system is therefore widely different from that of the Federal government. The President, through his Cabinet, has direct control of the great executive departments, and administrative officers though appointed with the concurrence of the Senate are responsible to the President and are removable by him. Yet it can hardly be said that there is more reason to fear centralization in the State than in the Nation. The practice of withdrawing appointive administrative officers from direct responsibility to the executive head of the State, who is directly accountable to the people, is of doubtful wisdom. A division of accountability which practically results in no real accountability to any one lessens the proper stimulus to efficiency.

Responsibility to the people is the essential safeguard of free institutions. This does not mean the election of all or even of a great number of administrative officers, for undue burdens upon the electoral machinery would defeat its purpose. But it would seem to imply that distribution of administrative powers should have as its correlative the proper centralization of responsibility. It may fairly be said to require that the executive authority, exercising the appointing power under whatever check, should be responsible for administration and should have the control upon which such responsibility must rest.

The Governor is to "take care that the laws are faithfully executed." But with respect to this duty there are further limitations than those involved in his relation to appointive officers. It is part of our system of government that the laws in large measure are enforced through officers locally chosen. To the Governor in certain cases is given the right to remove local officers, but this is only upon charges properly made and sustained after hearing. While the Governor's exercise of this jurisdiction is not subject to review, he in his province, like the highest court of the State in its province, must not act capriciously or arbitrarily, but in accordance with the rules

and principles governing his authority. The Governor is as much bound to support our constitutional system of local government so far as it provides for the local choice of officers, as he is to remove officers clearly proved to be guilty of serious neglect or misconduct. The Governor has no right to use his power of removal to assert his preferences or to attempt even temporarily to impose his will upon the community which has chosen its officer. The appeal to him is the necessary check to secure responsible government and must be justified by proof of such dereliction as may be sufficient to make removal of the elected officer consistent with our fundamental principles of local self-government.

It is therefore obvious that to secure efficient administration requires the co-operation of many forces. We must mainly rely upon the constant work of the educational and moral agencies which develop the public spirit that is needed to support democratic government. And we may make our governmental activities more responsive to the sentiments thus inculcated by such improvement of our nominating and electoral machinery as will facilitate the expression of the popular will, encourage the more active participation of the people in their political affairs, and thus make less easy the domination of selfish interests or the protection of those who find profit in law breaking.

There must also be emphasized the importance of the wise use of the appointing power, a counsel particularly needed in view of the enormous increase in administrative offices. The Constitution provides that appointments and promotions in the civil service shall be made according to merit and fitness to be ascertained so far as practicable by competitive examinations. While officers appointed by the Governor or by the Legislature are outside the Civil Service rules, it is obvious that merit and fitness should be the first consideration in these appointments.

The area of choice in appointments is limited in no slight degree by relations and obligations apparently incompatible with primary allegiance to the State, which are too frequently incident to the success of able men in private business; and

also by the small pecuniary rewards which are paid for State service involving serious sacrifices for many men of proved talent who are without independent means. But whatever may be said of the advisability of providing juster compensation for State officers, it is not necessary in order to attain the ends of government to compete with the material rewards of distinguished careers in business or in professional life.

Of far greater importance than the question of compensation is the proper recognition of the dignity of public service. This may be realized to some degree through that self-restraint which patriotic sentiment and the sense of justice should impose upon public critics, which should make them careful against prejudgment and slow to bring into disrepute those charged with public responsibilities. But on the other hand our safety largely depends upon the freedom of criticism, and in the main the public officer, though from time to time unjustly accused, will secure reasonable appreciation of his work. The American people are essentially fairminded, and in time a course of unjust censure hurts the purveyor more than its subject.

What is most influential in securing due recognition of the dignity of office is proper care in the selection of officers. So far as we may be able to raise the standards of administration we make easier the task of drawing to the public service men of high capacity and unselfish motive. Conspicuous examples of administrative efficiency, and the appropriate tributes won from a grateful people, will do more to secure disinterested men of talent for public office and to maintain high standards, than either protests against the abuse of criticism or increase of pecuniary rewards.

The problems which are suggested by these reflections are not peculiar to our State. With variant features they appear in all States. We rejoice in the notable talent which has been displayed in our great departments and a close examination of the work of the State will disclose to the just critic far more to merit praise than to deserve censure. The business of the State for the most part is well conducted and our insistence upon higher efficiency suggests no lack of appreciation of the fidelity and capacity which so largely are exem-

plified in State administration. We do not expect that in the representative activities of government we shall ever be free from the weaknesses inherent in our human nature. Nor on the other hand may we set bounds to progress. Our ideals must ever rise above our conduct and we can correct our practices only as we take counsel of our best aspirations and seek with unremitting persistence to attain the goals of free society.

Government is merely an organ of the community to secure a basis of peace and order essential to individual liberty and opportunity, and also to maintain the collective rights which cannot otherwise be safeguarded. Our dependence for progress is not chiefly upon governmental agencies but upon the virtues of sobriety, industry, thrift and moderation, upon the realization of our mutual dependence, and upon the gradual supplanting of motives of mere self-interest by those inspired by the appeals of brotherhood. The influences contributing to this development multiply more rapidly and are more potent than those to which they are opposed. In many groups, notable in their variety but dominated by the same spirit, our citizens are devoting themselves to the endeavors of philanthropy and to the work of education and moral enlightenment. It is through these efforts, so largely humble and obscure, that the community is vivified by wholesome influences and that truth and justice extend their victories.

I enter upon my second term of office with a keener sense of its responsibilities and of my own limitations. But I have an intense desire to render loyal service to the people. I congratulate the other officers who to-day assume official privileges and I voice your friendly interest in wishing them the highest degree of success in the discharge of their new responsibilities.

We may not forecast the exigencies of the next two years; but we may cherish the principles of our institutions; and, each in his own province, whether in public or private life, answering to the best of his ability the calls of duty, we may seek to emulate the example of those who have illumined our history with their record of faithful service and at least we may make somewhat easier the task of those who hereafter may labor for the improvement of the life of the commonwealth.

II

PROCLAMATIONS

II

PROCLAMATIONS

Appointing a Day of General Thanksgiving

STATE OF NEW YORK — EXECUTIVE CHAMBER

IN ORDER that endeavor may be crowned with gratitude ;

THAT we may appropriately express our appreciation of the opportunities of liberty and peace, of our freedom from disorder, of abundant harvests, of the manifold benefits of industry, of the gains of science, and of the widening efforts of philanthropy ;

THAT we may cultivate the joys of fellowship and that amid good cheer and the manifestations of brotherly kindness we may be drawn more closely together in mutual sympathy and in enhanced desire to promote the common weal ;

AND that with reverent spirit we may lift up our hearts in thanks to Almighty God for his goodness and in the united utterance of praise and hope find inspiration for public and private task ;

NOW, THEREFORE, I, Charles E. Hughes, Governor of the State of New York, by virtue of the authority vested in me by the laws of the State, do hereby appoint Thursday, the twenty-fifth day of November, in the year nineteen hundred and nine, as a day of General Thanksgiving.

DONE at the Capitol, in the city of Albany, this seventeenth day of November, in the year nineteen hundred and nine.

CHARLES E. HUGHES

By the Governor :

ROBERT H. FULLER,
Secretary to the Governor.

Ordering a Special Election in the Seventh Senate District

STATE OF NEW YORK — EXECUTIVE CHAMBER

WHEREAS, A vacancy exists in the office of Senator for the Seventh Senate District of the State of New York, caused by the death on the twenty-third day of October, 1909, of Hon. Patrick H. McCarren, Senator from said district;

NOW, THEREFORE, I, Charles E. Hughes, Governor of the State of New York, in pursuance of the provisions of section 292 of chapter 22 of the Laws of 1909, constituting chapter 17 of the Consolidated Laws, known as the Election Law, do hereby order and proclaim that an election for State Senator in the place of the said Patrick H. McCarren, be held in the Seventh Senate District, on Tuesday, the 21st day of December, 1909, such election to be conducted in the mode prescribed by law for the election of State Senators.

GIVEN under my hand and the Privy Seal of the State at the Capitol, in the city of Albany, this twenty-
[L. S.] fourth day of November in the year of our Lord one thousand nine hundred and nine.

CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,
Secretary to the Governor.

Ordering a Special Election in the Third Assembly District of Erie County

STATE OF NEW YORK — EXECUTIVE CHAMBER

WHEREAS, At the last general election there was a failure to elect to the office of Member of Assembly for the Third Assembly District of the County of Erie;

NOW, THEREFORE, I, Charles E. Hughes, Governor of the

State of New York, in pursuance of the provisions of section 292 of chapter 22 of the Laws of 1909, constituting chapter 17 of the Consolidated Laws, known as the Election Law, do hereby order and proclaim that an election for Member of Assembly be held in the Third Assembly District of the county of Erie on Tuesday, the 21st day of December, 1909, such election to be conducted in the mode prescribed by law for the election of Members of Assembly.

GIVEN under my hand and the Privy Seal of the State
at the Capitol, in the city of Albany, this thirtieth
[L. s.] day of November in the year of our Lord one
thousand nine hundred and nine.

CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,
Secretary to the Governor.

Ordering a Special Election in the Forty-second Senate District

STATE OF NEW YORK — EXECUTIVE CHAMBER

WHEREAS, A vacancy exists in the office of Senator for the Forty-second Senate District of the State of New York, composed of the counties of Wayne, Ontario and Yates, caused by the death on the sixteenth day of December, 1909, of John Raines, Senator from said district;

NOW, THEREFORE, I, Charles E. Hughes, Governor of the State of New York, in pursuance of the provisions of section 292 of chapter 22 of the Laws of 1909, constituting chapter 17 of the Consolidated Laws, known as the Election Law, do hereby order and proclaim that an election for State Senator in the place of the said John Raines, be held in the Forty-second Senate District, composed of the counties of Wayne, Ontario and Yates, on Tuesday, the 25th day of January,

1910, such election to be conducted in the mode prescribed by law for the election of State Senators.

GIVEN under my hand and the Privy Seal of the State
at the Capitol, in the city of Albany, this twenty-
[L. s.] seventh day of December in the year of our Lord
one thousand nine hundred and nine.

CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,
Secretary to the Governor.

III

MESSAGES TO THE LEGISLATURE

III

MESSAGES TO THE LEGISLATURE

Session Began January 6; Ended April 30

ANNUAL MESSAGE

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, January 6, 1909

To the Legislature:

I present to you the following statement as to the condition of the State, and my recommendations:

There was received from all sources during the fiscal year ending September 30, 1908, the sum of \$51,780,985.23.

Of this amount \$18,298,457.43 were realized from the sale of canal and highway bonds, and upon canal debt sinking fund and trust fund accounts, as follows:

Proceeds of sale of barge canal bonds.....	\$5,039,611 70
Proceeds of sale of bonds and temporary bonds for highway improvement	5,950,000 00
Principal and interest on bonds and judgments for canal debt sinking fund and interest on deposits of same	5,169,633 65
Trust funds, including twenty-year court and trust funds	2,139,212 08
	<hr/>
	\$18,298,457 43
	<hr/>

Apart from miscellaneous income (amounting to \$2,146,-275.08) the receipts from taxation showed a decrease of \$1,259,597.85 as follows:

	1907	1908
Special tax for judges, stenographers, etc.	\$218,282 14	\$368,098 31
Tax on corporations	8,581,223 44	8,937,635 24
Tax on organization of corporations	391,423 18	207,535 49
Tax on transfers of decedents' estates	5,435,394 97	6,605,891 46
Tax on transfers of stock	5,575,986 64	3,907,373 38
Tax on trafficking in liquors	9,697,504 24	9,359,318 63
Tax on mortgages	2,442,249 73	1,666,527 51
Tax on racing associations	215,925 29	247,443 31
Tax on land of nonresident owners	18,661 13	17,229 58
	<hr/>	<hr/>
	\$32,576,650 76	\$31,317,052 91

Decrease for year ending September 30, 1908. \$1,259,597 85

There were disbursed during the last fiscal year \$40,767,-480.87 as against \$39,012,687.28 in the preceding year. Of these disbursements \$15,377,341.45 were for canals, highways, trust fund transactions, forest purchases, and redemption of Adirondack Park bonds, exceeding similar outlays in the previous year by \$851,732.92, as follows:

	1907	1908
Canals, for all purposes, including amounts paid from canal debt sinking fund (1907, \$5,369,384.45; 1908, \$1,805,527.87)	\$8,760,034 06	\$7,236,348 33
Highways, for all purposes, including temporary certificates (1907, \$557,423.34; 1908, \$1,810,000)	3,279,967 58	7,162,915 25

Trust fund transactions	\$1,935,989 31	\$437,108 68
Adirondack Park and Catskill Preserve purchases	339,117 58	337,469 19
Principal and interest Adiron- dack Park bonds	210,500 00	203,500 00
	<hr/>	<hr/>
	\$14,525,608 53	\$15,377,341 45
	<hr/>	<hr/>

The available balance or surplus on September 30, 1908, amounted to \$12,857,784.06, a decrease of \$820,354.41 as compared with the surplus at the close of the year before.

By reason of the issue of bonds for canal and highway purposes the State debt has been increased to \$26,220,660, to wit:

	1907	1908
Canal debt	\$15,230,660 00	\$20,220,660 00
Highway debt	1,860,000 00	6,000,000 00
Adirondack Park	200,000 00
	<hr/>	<hr/>
	\$17,290,660 00	\$26,220,660 00
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The sinking funds for the canal and highway debts amounted on September 30, 1908, to \$15,500,494.14, the residue of the debt in excess of sinking funds being \$10,720,165.86.

ECONOMY AND PROGRESS

The growing demands upon administration and the just requirements of our institutional work admonish us to practice the strictest economy. Care in making appropriations and in scrutiny of new proposals for outlays should not be relaxed; and there should be renewed determination to reduce expenses wherever this can be accomplished without injustice or loss of efficiency and to enlarge our commitments only in cases where the exigency is clearly revealed by thorough examination. Wasteful expenditure inflicts a double wrong. It not only is an unwarrantable use of the people's money, but is an unjust

withdrawal from the means available to meet pressing needs. Economy is the essential condition of progress.

CELEBRATION OF DISCOVERIES

We celebrate this year with sister States the Ter-Centenary discoveries of Samuel de Champlain and Henry Hudson, and suitable provision should be made for worthy commemoration. This, however, should not be limited to mere ceremonial, but in our schools and in our voluntary associations we should take advantage of this opportunity to kindle interest in the story of our development. While the formal celebrations will be confined to the scenes of the discoveries, appropriate meetings under local auspices should be held throughout the State and these interesting occasions should contribute powerfully to the re-enforcement of the patriotic sentiment of the people.

OUR FORESTS

During the past year strong impetus was given to the movement for the conservation of our natural resources by the action of the President in calling a conference of the Governors of the States. The people of this State may congratulate themselves upon the measures they have already taken for this purpose. But much remains to be accomplished. Our Forest Preserve now consists of 1,655,760 acres, of which 107,310 acres were purchased or contracted for during the past year. These purchases should be extended as rapidly as prudent use of our available means will permit.

It is idle, however, to extend the State's holdings unless we take proper measures for their protection. The serious menace of forest fires has received most unfortunate illustration during the past season. More than 177,000 acres of public and private lands were burned over and it is estimated that the actual pecuniary loss, for the most part in standing timber, was nearly \$650,000. But the serious damage, apart from the destruction of timber, which was wrought in the retardation of new growth defies estimate. We may find some comfort in the record of improved efficiency of the department as shown in the Forest Commissioner's report. It appears by

comparison with the year 1903, the period of maximum fire loss, that with only one-half the number of fires, about 500,000 acres were then burned over and that the pecuniary loss was nearly \$900,000. But the measure of protection is still, as our recent experience shows, far from adequate. We should have a more effective system of patrol. The number of fires caused by the use of coal in locomotives makes it necessary, if other precautions are insufficient, that railroad companies should be compelled to use a different fuel. I also concur in the recommendation of the Commissioner that proper provision should be made for the suspension of hunting privileges in time of drought. All other reasonable measures should be taken to prevent fire.

The conservation of our forests is so essential to the maintenance of our water supply and to the health and industrial activities of the people, that the police powers of the State should be used to secure the proper regulation of forests held in private ownership, as for example by preventing the cutting of trees under suitable dimensions. It is also important that fallen trees and accumulated debris should be removed so far as practicable, and with respect to this the State should set an example.

Our present constitutional provision, in so far as it prevents the proper care and nurture of our forest preserve, interferes with its own object. The time must shortly come when, no longer having reason to fear the grasp of the selfish hand and having settled the inviolability of the public interest in our priceless forest possessions, we shall make possible their scientific protection and their proper utilization for the public benefit. We may thus not only secure needed advantages in safeguarding our streams and industrial power, but we may also properly promote the health and enjoyment of the people. We shall not realize the full benefit of these great resources until we not only preserve our forests by intelligent treatment, but also by means of suitable roads and well-kept trails we make our mountain pleasure grounds, under wise regulation protecting woodland and nature's beauty, more accessible to our people and render available to the many the invigoration and the inspiration which few may now enjoy.

I recommended last year that encouragement should be given to tree planting. This I believe to be a wise policy which can be pursued, without loss to the State, in connection with the reforestation of its own holdings by furnishing pine and spruce trees at cost to be planted by the owners of non-arable lands under the supervision of the department.

The preservation of forests in all parts of the State and the protection of our far-famed natural scenery should be our constant care. And on our border-land these objects should be attained by such interstate agreements as may be proper and necessary to secure adequate control.

WATER POWERS

In my first message to the Legislature I recommended the consideration of the great value of our undeveloped water powers and the necessity of preserving them for the benefit of all the people of the State. At the session of 1907, the Legislature authorized the State Water Supply Commission to collect information relating to the water powers of the State and to devise plans for their development. With competent engineering assistance they have made valuable studies and their report to the Legislature last year, with that about to be made, deserves the most careful consideration. Of the horse power developed by water in the United States for manufacturing purposes it appears that twenty-seven and one-half per cent., or 446,134 horse power, is used in the State of New York. Facility in the transmission of electrical power has increased to an extraordinary degree the importance of water power for its development and the relation of our water powers to the industrial energies of the State. It has been estimated by the water supply commissioners that, excluding Niagara and the St. Lawrence, the rivers of the State with the proper storage of their flood waters are capable of furnishing at least 1,000,000 horse power for industrial purposes; and it is deemed clear that 550,000 horse power of energy is annually allowed to run to waste because no well-devised and comprehensive plan for the general and systematic development of water powers has been undertaken by the

State. And the incidental advantages which would accrue from the regulation of our streams and the prevention of drought and flood are sufficiently obvious.

We now have within our grasp an opportunity which for the sake of the industrial freedom and prosperity of the future we should not permit to be wasted. These great natural sources of power should not only be developed in a manner which the State alone can make possible, but should be held for the benefit of the people under conditions which will ensure the protection of the common right and fair return for privileges granted.

The commissioners will submit to your honorable body special studies of particular water power development, which it appears may be made with reasonable assurance of direct pecuniary profit to the State, apart from the general benefits derivable from the policy of State control. It is believed that these studies have been made with skill and precision and the immense importance of the proposals will at once be recognized. They should be most carefully considered, and if we are to undertake the development of these projects and the prosecution of comprehensive plans, the necessary steps to secure the advantages which they promise should promptly be taken.

CANALS

Contracts to the amount of \$13,421,771 were awarded during the past year in connection with the barge canal improvement and there are now in force contracts for building 194 miles of canal at a total price of \$35,595,544. It is reported by the State Engineer and Surveyor that the preparation of plans has been completed including the three branches—the Erie, the Champlain, and the Oswego—except for forty-seven miles, and that the plans for the latter are nearly ready. It appears that the aggregate amount of the contracts let is seven and three-quarters per cent. less than the preliminary estimates. Under the law governing this improvement the plans must be prepared in the first instance by the State Engineer; they are submitted for the consideration of the board of advisory engineers, and must be acted upon by the Canal

Board. When adopted by the latter board the contracts are let by the Superintendent of Public Works. If in the judgment of the State Engineer the work is not being performed according to contract or for the best interests of the State, he is to certify the fact to the Canal Board which then has power to suspend work and either to direct the Superintendent of Public Works to complete the same or to relet the contract. These various checks were supplied with the obvious purpose of safeguarding the public interest. But it will be noted that there is a wide division of responsibility with regard to the progress of the enterprise.

Provision of artificial waterways suitably constructed is vital to the commerce of the State and the improvement now in progress should be expedited with the utmost dispatch consistent with intelligent planning and proper execution.

HIGHWAYS AND MOTOR VEHICLES

There have been 809 miles of State roads completed during the past year. The new Highway Law is now in effect and provides for an improved system of administration designed to perfect methods and secure proper continuity of organization and policy. It is of little purpose to build new roads unless the roads which are constructed are also properly maintained. And in no department of the State's work are there more serious problems and greater need of the utmost efficiency. It is believed that these necessities are fully appreciated by the people and that in response to their demand we shall be able to secure a system of improved highways worthy of the State.

The difficulty of maintaining our highways has been so largely increased by the use of motor vehicles that I recommend for your consideration the advisability of imposing a substantial license tax for the privilege of operating motor vehicles within the State, the proceeds to be devoted to highway repair. It is desirable that such license fees should be uniform in our State and in the States with which we are in contact, and in advance of legislation opportunity should be offered for prompt interchange of opinion and for securing

an agreed basis of action. This, it would seem, might be accomplished through the Commissioners on Uniform Laws.

The reckless disregard of human life that is so frequently manifested in the driving of automobiles calls for drastic measures of protection, both with regard to means of identifying vehicles and in providing an increased punishment where those guilty of criminal conduct seek to escape arrest. And I invite your attention to this matter.

POLLUTION OF STREAMS

Under primitive conditions rivers are the natural conduits for wastes and the scarcity of population made this use comparatively innocuous. But with the growth of communities and the expansion of industry, the use of streams as sewers creates an intolerable nuisance and their protection from pollution is essential to the public health and comfort. We have reached a time in the development of this State when proper measures for the protection of our streams are imperatively needed. We can no longer afford to permit the sewage of our cities and our industrial wastes to be poured into our watercourses, and the sooner we take suitable preventive measures the easier it will be to attain the desired result.

Our present laws are inadequate and should be thoroughly revised. So far as sewage is concerned we should have legislation under which local communities may be compelled without undue delay to make provision for suitable disposal. If we wait for this until we have settled all problems regarding industrial wastes, we shall make progress in neither direction. We should act so far as we have knowledge and seek more light as a guide for further action.

Special difficulties are presented in the case of certain industrial wastes, where adequate means for their disposal at a rate of expense that will permit the plants to continue in operation are apparently not known.

I have been asked to exercise executive authority under the Public Health Law and peremptorily to order the discontinuance of such discharges into our streams. But if it could be assumed that the law confers such authority upon the Execu-

tive in the absence of conditions menacing life and health, which frequently on account of the nonuse of the streams for drinking purposes do not exist, consideration must be given to other questions growing out of the development of the industries and of the communities in which they exist. The people of such communities have been found not unnaturally to regard their means of livelihood as the paramount consideration. So far as the general public is concerned the State has permitted the establishment of industries with the incident growth of communities clustering about them, without restrictions to safeguard the purity of streams. In 1903 there was legislation, obviously of a makeshift character, which in effect recognized the continued right of pollution to the extent then existing.

As a practical matter where there are processes for the disposal of industrial wastes which are not prohibitive in cost, their adoption should be insisted upon. And in other cases, if it is not deemed advisable to impose absolute restriction, we should at least provide for proper experimentation under State authority in order that as soon as possible means may be devised for complete protection of our streams from pollution without industrial dislocation.

I ask your consideration of this subject to the end that our laws be revised in order to prevent the pollution of streams so far as is practicable and to equip the State Department of Health with means for conducting necessary researches, to enable us to secure the complete protection that is needed.

PUBLIC HEALTH

Our attention has been forcibly directed to the urgent necessity of preventing the spread of tuberculosis. The number of deaths from pulmonary tuberculosis in this State in 1907 was 14,421, of which 8,996 occurred in Greater New York and 5,435 in other portions of the State. In diffusing information and in directing attention to practicable measures, effective work has been done during the past year by the State Department of Health and by private benevolence through the State Charities Aid Association and other organizations.

And the growing interest in the subject was manifested in a striking manner by the International Congress held in Washington. In teaching the lessons of experience we must not forget that many of those whom we would instruct dwell under such conditions that it is practically impossible for them to observe the needed safeguards against infection. Recent discussions emphasize the importance of providing means by which those who live in overcrowded quarters and amid unfavorable surroundings may be removed to hospitals where they may have adequate care and no longer constitute a source of infection. Increased provision for hospital care of advanced cases will constitute a most important protection to the community. Greater progress with respect to this has been made in New York city than elsewhere. There are about 1,900 beds there available for tubercular patients, while in other parts of the State it seems that the number of such beds is only about 250. While it is desirable that more adequate provision should be made in the metropolis, the most striking need is increased hospital accommodation in other parts of the State. I recommend for your consideration the means by which this may be suitably provided either through State or local authority or both.

The increased difficulty of securing sites for public institutions may be noted. Their location obviously should depend upon general conditions, and local sentiment, often anticipating harm where none will come, should not exert a preponderating influence. Otherwise with the extension of large private holdings and the ambition of those interested in suburban development, we shall be unable satisfactorily to locate our public institutions anywhere.

I recommend that chapter 638 of the Laws of 1903, providing that a hospital, camp, or other establishment for persons suffering from pulmonary tuberculosis shall not be established in any town unless the board of supervisors of the county and the town board of the town shall authorize it, be repealed.

We have reason to be gratified with the results shown in the institution provided for the care of incipient cases, and its

facilities should be extended so that it may meet to a reasonable degree the demands that are made upon it.

Associated with the question of public health is the need of improved legislation regarding the sale of drugs. Our present system of supervision is faulty. The State Board of Pharmacy consists of fifteen members elected by licensed pharmacists and druggists. The State has no proper control over the selections and the members of the board are not properly accountable to State authority. Yet to the board so constituted are committed important powers with regard to the enforcement of the laws of the State relating to drugs and the collection of the penalties for infraction of these laws. Without intending to pass the slightest criticism upon the members of the board or the motives which prompted this legislation, it would seem obvious that it is incompatible with a proper theory of State administration. State officers enforcing the State laws should either be elected by the people or appointed by officers responsible to the people. I recommend therefore the revision of the laws relating to the State Board of Pharmacy and proper amendments to secure such additional restrictions with regard to the sale of drugs as may be advisable.

AGRICULTURE

The policy of the State with regard to the promotion of our agricultural interests involving provision for research, for agricultural education, and for needed departmental activities, should be continued. The plan adopted for the comprehensive development of the State Fair should be pursued and each year advance should be made toward its completion. It would be well to establish the policy of completing the work within a fixed period of years so that its benefits may be realized as soon as practicable in accordance with a definite program and without the chance of loss and delay through haphazard improvements.

I recommend that consideration be given to the subject of meat inspection so that there may be proper supervision over the slaughtering of animals in the State of New York and

the public health protected accordingly. Federal inspection is limited to those doing an interstate or export business and should be supplemented by proper inspection on the part of the State. The policy now prosecuted with regard to diseases of domestic animals appears to be successful, having just regard to the interests of owners and of the general public, and it should be properly supported.

There should also be efficient work in protecting the milk supply and this should be conducted in such a manner as to give proper consideration and encouragement to those engaged in the production of dairy products so that they may be produced in the most cleanly and healthful manner. Unnecessary duplication of work in the State departments should be avoided, and the Legislature should decide whether the supervision of milk and dairy products should be confided to the Health Department or to the Agricultural Department, and provision should be made for the efficient conduct of the work by the department entrusted with it. This is also true as to laws relating to pure foods.

The educational work which has been done through the medium of farmers' institutes is believed to be of great benefit to the farming interests and is growing in popularity. This is a complement to the work of our agricultural schools and brings to the producer the knowledge of which he may make immediate practical use. I recommend that suitable provision should be made to support and extend this work.

During the past few weeks there has broken out in this State a highly contagious and dangerous disease, known as foot and mouth disease, affecting domestic animals. Every precaution permitted by law and possible within the means of the Department of Agriculture has been taken to check the spread of the disease, and I understand that it is now so circumscribed that it will soon disappear from the State. Its existence, however, calls attention to the need of an emergency fund for the use of the department to meet cases where measures of protection must be taken promptly.

LABOR

I renew the recommendation made in my first message that in order to protect children against dangerous employments, there should be a more precise prohibition specifying the occupations, to be selected with just discrimination, in which children under sixteen years of age shall not be employed. It is believed that this will be an improvement upon the general terms of the present law.

It is also desirable in the interests of justice, as well as to aid in the enforcement of the law, that where a minor under sixteen sustains an injury in the course of an employment which the law forbids, the employer should be liable by reason of the violation of the law, without regard to contributory negligence or the employee's assumption of risk. I believe that it would be salutary to go further in accordance with the principles which have been announced in some other jurisdictions and in the case of injuries sustained by adults by reason of conditions created or permitted in violation of the Labor law to preclude a defense upon the ground of the assumption of risk by the employee. This would be an appropriate penalty for an infringement of the statute and secure the protection which the statute is designed to afford by requiring suitable safeguards against the risks that are incident to the employment. Our statute should make this policy clear in appropriate terms.

I also recommend that provision be made for special and expert inquiry into the questions relating to employer's liability and compensation for workmen's injuries. Our present methods are wasteful and result in injustice. Numbers of negligence cases are prosecuted upon a basis which gives the attorneys a high percentage of recoveries. Only a small percentage of the premiums paid for insurance against liability is devoted to payment of losses. As a result the workmen do not receive proper compensation and employers pay large amounts that do not reach them. There are constitutional restrictions which stand in the way of some of the remedies which have been devised in other countries; but the subject should be thoroughly examined to the end that the present

waste and injustice should be mitigated to the fullest extent that may be found to be at once practicable and consistent with the provisions of our fundamental law.

At the last session a law was passed providing for semi-monthly payment of railroad employees. While a penalty for its violation is provided for by the Labor law, it is not satisfactory, and the Penal Code should be amended so as to bring within its provisions the violation of the amendment of last year. There should be no question as to the adequacy of the penalty.

EDUCATION

The lack of suitable vocational training is a matter of serious concern. Adequate opportunities for boys to become skilled workmen do not exist. And none of our efforts to supply industrial training have fully met the difficulty. A serious aspect of it is that children who are not being trained for some definite vocation are not being trained for anything. It is said that more than one-half of all who enter the public elementary schools leave before completing the work of the schools. Obviously the curriculum of the elementary schools should make it to the interest of the children to remain to the end of the course. At least it should be of a character to impel rational parents to see that it is clearly to their ultimate interest to keep their children in school to the end of the elementary course and to justify the State in so doing in case parents are remiss.

The State Educational Department is seeking to improve the situation by introducing a system of public trade or vocational schools which will take pupils from the elementary schools and train them in any definite vocation for which there are a sufficient number of pupils to warrant the expense. Chapter 263 of the Laws of 1908 not only sanctions the plan but provides the machinery for promoting it. A division to promote the organization of trade schools has been established in the Education Department and plans are well matured for opening such schools in a dozen or more cities in the near future. It is also necessary that the school attendance and child labor laws should be perfected and more completely en-

forced; and the movement for the organization of trade schools wherever conditions warrant it should be properly supported.

PRIMARIES

One of the most striking developments of recent years is the rapid growth of the demand for improved methods of nominating candidates for public office. It is a late phase of the long struggle against the control of the powers of government by selfish interests. Methods which make easy this control are doomed, for the people will not be content with the mere forms of self government.

There has been a notable progress in perfecting our electoral machinery and in the reduction of opportunities for corruption in connection with elections. But the part played by political parties in nominating candidates makes it necessary to regulate the nominating machinery as well, if the public interest is to be properly protected. As our citizens in general make their choice between the candidates offered by the opposing parties, we must ultimately depend for truly representative government upon the selection of these candidates in accordance with the wishes of the members of the respective parties.

This is recognized in theory and denied in practice. In theory party candidates are selected by those who have been chosen by the party voters to represent them in conventions. In practice the delegates to nominating conventions are generally mere pieces on the political chess board and most of them might as well be inanimate so far as their effective participation in the choice of candidates is concerned. Party candidates are in effect generally appointed, and by those who have not been invested with any such appointing power.

This practice is attended with serious consequences. It has a disastrous effect upon party leadership. The power of selecting candidates is so important that there is a constant temptation to protect it by such manipulations of the party machinery as will make it serve individual interests. Party principles and the essentials of successful administration of office are too largely subordinated to the necessities of political

leaders and their retention of control. The fine service of party loyalty is prostituted to the base uses of those who make the maintenance of their individual power paramount to true party interests. And the just strength and dignity of party leadership often fails by reason of public contempt for methods frequently used to secure support for its counterfeit. Real leadership of ability and force of character suffers from such methods and would largely gain by increasing the difficulty of their pursuit.

The present system tends to discourage participation by the party voters in the affairs of the party. Entrenched power is so strong and the influence upon the choice of party candidates is so remote that it requires an unusual situation to call forth the activities of the party members to the extent desirable.

The candidates selected by the present method too often and not unnaturally regard themselves as primarily accountable, not to their constituents nor even, broadly speaking, to their party, but to those individuals to whom they feel they owe their offices and upon the continuance of whose good will they deem their political future to depend.

But the most serious consequence is to the people at large. To the extent that party machinery can be dominated by the few the opportunity for special interests which desire to control the administration of government, to shape the laws, to prevent the passage of laws, or to break the laws with impunity, is increased. These interests are ever at work stealthily and persistently endeavoring to pervert the government to the service of their own ends. All that is worst in our public life finds its readiest means of access to power through the control of the nominating machinery of parties. Party organization needs constantly to defend itself from these encroachments, and the people for their proper security must see that the defenses are built as strongly as possible.

There have been and are conspicuous illustrations of party leadership won and held in opposition to those who have represented special interests, and endeavoring faithfully and honorably to perform its proper function. But this does not

alter the fact that our present method facilitates the control of government by those whose purposes are antagonistic to the public welfare. Nor should we be unmindful of the extent through which the force of enlightened public sentiment in indirect ways mitigates the evils inherent in our present system. But this sentiment works under conspicuous disadvantages, and it is a defect in our system requiring remedy that the actual power of nomination should reside with those who are under strong temptation to disregard the public interest in favor of private advantage so far as that course may be deemed to be safe.

When we inquire what remedy is available, it may be said that there is none which can be considered as complete, because human nature cannot be changed by legislation and opportunities for political mischief will exist under any system. But we may make improvement and these opportunities may be diminished. We should perfect our primary laws by providing for an official primary ballot, by extending our enrollment system and by placing our primary elections under substantially the same restrictions as our general elections.

But we should go beyond this. As the evil so largely resides in the perversion of representation we should further proceed along the line of progress by restoring effectively to the many the powers which properly belong to them and have been usurped by the few. What history has shown to be essential to the protection of the people is likewise needed for the protection of parties, and thus ultimately for the re-enforcement of public rights. We have decided not to trust despotism, though occasionally it may be benevolent, nor do we favor government by aristocracy. Experience has shown that the people can be better trusted than their self-constituted guardians.

The rule of the people involves vigorous discussion and popular contests, but we are finally committed to it because in the long run our safety depends upon it.

If we apply these principles to our party activities we shall make them the more wholesome, as they will more readily

respond to the intelligent and conscientious purposes of the party members.

The time has come, I believe, when nominations by all parties for elective offices should be made directly by the enrolled voters of the parties respectively. This will promote true party representation. It will tend to strengthen and dignify party leadership by making it less susceptible to misuse and more in accord with general party sentiment. By increasing the direct influence of the party voters their participation in party affairs will be encouraged. It will make the elective officer more independent of those who would control his action for their selfish advantage, and enable him to appeal more directly to his constituency upon the basis of faithful service. It cannot fail in the main to prove a strong barrier against the efforts of those who seek, by determining the selection of candidates, to pervert administration to the service of privilege or to secure immunity for law-breaking. It is a reform which is instinct with the spirit of our institutions, and it is difficult to see how any party man, however earnest in his partizanship, can oppose the right of the voters of the party really to decide who shall represent them as candidates.

The object of our primary legislation has been said by the Court of Appeals to be "to permit the voters to construct the organization from the bottom upwards, instead of permitting leaders to construct it from the top downwards." This is not only important with regard to offices in the organization, but the object cannot be effected so long as nominations may be dictated and the power to make them does not actually reside with the party voters.

I therefore recommend a system of direct nominations by all parties for all elective offices, other than those of presidential electors, filled at the November election or at special elections called to fill vacancies in such offices. Heretofore I have suggested that it be made permissive, because it was believed that such a provision would rapidly lead to its general extension. But the objections urged to this course and the strength which the movement for direct nominations has gathered have produced the conviction that we should decide upon a policy binding upon all parties. In this State the way has been

prepared for this course by the method of party enrollment now in use in portions of the State and by our familiarity with provisions designed to prevent corrupt practices and frauds at elections. While I do not desire unduly to elaborate detail, I further recommend:

(1) That provision be made for the enrollment of party voters throughout the State, and that participation in primary elections be limited to the enrolled party voters, with stringent measures to prevent fraud. The enrollment may be made in substantially the same manner as is provided for with regard to registration.

(2) That the expense of holding primary elections, including the printing of official ballots, provision of polling places and the like, be borne by the public.

(3) That the Corrupt Practices act be extended so as to prescribe the expenses which may lawfully be incurred in connection with candidacies for nomination and to ensure the publicity of all expenses.

(4) That the amount which may be expended by candidates for nomination be limited.

(5) That generally, with such changes as may be necessary for adaptation, the safeguards of the law governing general elections be extended to primary elections.

We may thus, in perfecting the plan, avoid such mistakes as may have been made in other States while securing the benefits of a system which by virtue of its appeal to the sentiment of liberty has rapidly won its way in the favor of the people throughout the country.

ELECTIONS

We should further strengthen our laws for the protection of the purity of elections. Provision should be made for publicity as to all campaign expenditures. The number of those who may be compensated as poll workers should be limited. The law relating to the identification of persons registering and voting should be made applicable wherever fraudulent practices suggest the need of such a remedy. The circulation of anonymous publications affecting candidates for

office should be prohibited under appropriate penalties, and requirement should be made that all campaign documents affecting candidates should be either published in newspapers upon the responsibility of their proprietors, or should bear the signatures of the persons or of the officers of political committees issuing the same.

I again recommend the adoption of a simplified form of ballot without the party column in which the names of candidates for the respective offices shall appear but once grouped under the names of the offices. This would place parties, candidates, and voters, respectively, upon an equal footing. Our electoral machinery should not encourage carelessness, but each voter should express his choice with regard to each office separately. No candidate should have more than one place upon the ballot. Parties will not suffer, as the experience of other States abundantly shows, from such a change in the ballot. On the other hand it is important in order to gain the real benefits of party organization that parties should not be favored by arrangements of the ballot, but should be compelled to rely for their success upon the principles they espouse and the merits of the candidates they present. Nor is it a countervailing argument that candidates for minor offices will suffer in the voting through the absence of the party column. This will not be the case if the public is interested in the filling of the office. If, however, experience shall show that we have more elective offices than the voters are willing to consider deliberately in exercising their right of suffrage, the remedy would seem to be to reduce the number by appropriate changes in our system and by concentrating the responsibility of administration, rather than by placing through the form of ballot a premium upon inattention to candidates and their qualifications.

I also renew my recommendation that provision should be made to familiarize voters with proposed constitutional amendments as, for example, by the delivery of the text of the amendment at the time of registration in districts where personal registration is necessary, and by suitable notification elsewhere.

LINES OF PROGRESS

While we may hesitate to forecast the future it would seem that progress in solving the problems of State government will involve,

(1) The concentration of responsibility with regard to executive powers in order to promote efficiency of administration;

(2) Direct accountability to the people by those charged with this executive control over administrative agencies;

(3) Such provision with regard to electoral machinery as will aid in focusing the attention of the people upon the officers so accountable;

(4) Adequate means to secure the effective expression of the will of the people in the selection of such officers.

Some of the steps which may now be taken in these directions have already been considered. In order to aid in the suitable concentration of executive authority, it would seem to be advisable that the administrative control reserved to the Senate by the statutory provisions securing to it, for the most part, the power of removal of officers appointed by the Governor with the concurrence of the Senate, should be relinquished, and that in the State the Executive should have a power of removal similar to that exercised by the President in the Federal sphere.

PUBLIC SERVICE COMMISSIONS

The policy which the State has adopted for regulating its railroad and certain other public service corporations has been abundantly vindicated by the test of experience. It is obvious that if the State is to make serious attempt at regulating its public service corporations it must provide adequate machinery under general legislative authority for fair investigation and suitable redress of grievances according to their respective merits. Such amendments of the law as experience shows to be advisable to facilitate administration or to improve its provisions and more fully to carry out the intent of the statute, should be supplied.

I also renew my recommendation that the Public Service

Commissions law should be extended to telegraph and telephone companies and that they should be brought under appropriate regulation as to rates, service and other matters similar to that which has been provided for corporations at present subject to the law.

BANKING AND INSURANCE

The admirable amendments to the law passed at the last session with regard to the supervision of banking institutions and to banking practices leaves little room for present suggestion of improvements. We may await adequate experience to show the need for any radical change. I commend, however, to your careful consideration the report of the Superintendent of Banks.

With regard to the Insurance laws it is also important that we should have suitable range of experience before any radical modification is made in the restrictions designed to protect the policy holders from extravagant outlays under which important economies in administration have been effected. But it is my desire that the laws should be entirely fair in their operation and that any suggested changes which are consistent with the interests of policy holders and will not open the door to the recurrence of old abuses, should receive proper consideration.

It would seem advisable that provision should be made for the valuation of securities held by insurance companies upon a fairer basis—that is, with due regard to their investment value—so that the companies may be saved an apparent impairment due to temporary fluctuations in market quotations which cannot fairly be taken to represent actual losses. It would seem that the plan adopted last year in the case of savings banks may be safely followed so as to provide for the report of securities, not in default, at their investment value by amortization, that is, by the gradual extinction through suitable charges and credits of the premium or discount involved in the purchase price, so as to bring them to par at maturity.

The Superintendent of Insurance should also have authority

to conduct the liquidation of insolvent insurance companies in a manner similar to that which has been authorized in the case of banking institutions.

The present method of having banks and insurance companies pay the cost of their examinations is contrary to sound policy. We have abolished the plan of charging upon railroad corporations the expenses of supervision and we should follow the same course in connection with other institutions under State surveillance. This would involve an additional charge upon our income; but the supervision of these enterprises is in the interest of all the people and its cost should be borne by all the people as any other governmental expense.

CITY CHARTERS

Each year a very large number of bills are introduced amending the charters of our cities. These amendments for the most part are suggested by exigencies which seemed to demand escape from restrictions at one time supposed to be in the public interest. Their constant recurrence and the absurdity of securing relief from the Legislature with regard to the minutiae of local administration, point to the advisability of widening the sphere of local control. There should be a careful study of the problem of city charters, in order to develop a plan under which local responsibility may be fixed for the details of administration within the limits of a general scheme of government provided by the Legislature. Elaborate charter provisions are the prolific cause of special legislation and defeat their own purpose. For apart from exceptional emergencies, communities must look for their salvation not to the State government, but to the public spirit and active interest of their citizens. Meanwhile, and until improved charters are provided, I recommend that care be taken in amending existing charters, so that, wherever practicable, the amendments should be made in such manner as to make further special legislation unnecessary.

NEW YORK CITY

There is no more serious question than that of securing for Greater New York a proper plan of government. A Com-

mission charged with the duty of revising the charter of the city was provided for in 1907, and, with its membership enlarged, has continued its work during a large part of the past year. Its members, who serve without pay and are men of large experience in the affairs of the city, have devoted themselves without stint, and in a most self-sacrificing manner, to their important task. It is expected that their report will be submitted to your honorable body at this session, and it should receive the most careful consideration.

You will also have the advantage of the investigation which has been made through a committee of your honorable body. And we may congratulate the State upon the widespread interest taken in the problems presented,—an interest largely promoted by the work of officers of the city charged with the duty of investigation and by the important researches which have been made through agencies supported by public-spirited citizens.

Such information as has been received with regard to the financial condition of the city raises a most serious question as to the extent of its borrowing capacity and shows the most pressing need for economy and self-restraint in administration. The financial condition of the city is the more deplorable because of the imperative necessity of securing improvement in transit facilities. And there is no subject which requires more earnest consideration. The cost of new subways, the probable interest charges in case moneys for their construction were raised upon private credit, the liability of privately owned properties and franchises to taxation, the returns naturally expected by those who would engage in such enterprises solely for purposes of profit, together with the tendency to discourage additional lines in the view that this course may be of advantage to lines already existing, make it unlikely that we should be able in any event to obtain a proper measure of relief through the construction of subways by private capital assuming of course that the established rate of fare, (five cents), be maintained. There may be exceptions in the cases of routes which would be regarded as aids to existing transportation lines.

Provision for the municipal construction of rapid transit

lines was decided upon by the referendum of 1894, and there is no provision for building such lines with private capital except in the case of certain extensions of, and additions to, existing lines. The policy of construction at public expense is justified because of the importance of securing a comprehensive transit development with proper regard to the needs of the city as a whole and under conditions which, though safe and advantageous for the city, might not be regarded as attractive by individuals considering an investment solely for purposes of profit. Suitable transit lines are absolutely necessary means of intercommunication, and are as essential to the city's life as streets and bridges. The fact that they have not been considered in the same way merely attests the tardiness of our comprehension of the needs of a developing metropolis. This is apart from the question of extension of municipal activities in the actual operation of such enterprises, for this cannot be regarded as desirable, at least until civic spirit has secured a far greater degree of efficiency in administration than hitherto has been illustrated.

We must take conditions as we find them. The financial condition of the city is a very disagreeable fact and the necessity of securing additional transit facilities must be reckoned with. It may be urged that it would be advisable not to seek any relief through the enlargement of the city's borrowing capacity and that through stress of poverty and the lack of sorely needed improvements municipal thrift should be enforced. But it can hardly be expected that the economies actually effected under an improved system of administration will be adequate to provide subways in addition to other municipal improvements that are necessary. Relief must be provided. And there would seem to be no unwisdom or prompting to extravagance in securing the measure of relief available through the adoption of the constitutional amendment with regard to the debt limit, which was approved at the last session of the Legislature. This relates to the exclusion from the computation of the debt limit of such improvements as will yield to the city a net revenue in excess of maintenance, interest and amortization charges. It also provides that any indebtedness heretofore incurred by the city

for rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by the city therefrom shall meet the interest and amortization installments thereof, the increase in borrowing capacity resulting from the exclusion of such debts to be available only for rapid transit or dock purposes. The situation urgently calls for action and I recommend that this amendment be agreed to so that it may be submitted to the people for adoption.

We must also consider whether any other means are available on fair terms to the city for the construction of subways. And in view of our pressing necessities it may be advisable to consider these questions with regard to a particular line or lines independently of a general plan of action for the future.

STATUTORY CONSOLIDATION

A noteworthy event is the completion of the work of consolidating our general statutes. The condition of our statute law has long been a reproach to the State. Scattered through the scores of volumes of the session laws are numerous general statutes and the need of bringing together the laws relating to the same subjects with an appropriate classification is most urgent. This task has been committed to a board of statutory consolidation composed of distinguished lawyers. By the act creating the board it was directed not to change the substance of the statutes of substantive law, the purpose being to secure simplification and orderly arrangement. While I have not been able to make a close examination in detail of the consolidated statutes that have been prepared, the approval which the work of the board has received from representative associations and leading members of the bar attests its excellence and justifies me in recommending it to your favorable consideration. The work has been brought to completion by Adolph J. Rodenbeck, William B. Hornblower, John G. Milburn, and Adelbert Moot. They have served without compensation and are entitled to the gratitude of the people for the ability and fidelity which has characterized their labors and won such striking commendation.

If the laws enacted by the present session do not refer appropriately to the consolidated laws, further work of consolidation will be required. It is therefore obviously important that the consolidated laws should be enacted at the beginning of the session so that we may start with one body of general substantive law, and that all amendments to the law may properly refer thereto. I strongly urge upon you the wisdom of this course.

JUDICIAL PROCEDURE AND LAW REFORM

The Board of Statutory Consolidation was also directed to report such amendments to the law as it might deem suitable to condense and simplify the laws relating to practice and thus improve our system of judicial procedure. This object of their appointment has not yet been fulfilled. But they have prepared the way for needed reform by removing from the Code of Civil Procedure provisions of substantive law and placing them in their appropriate context in the consolidated laws. From this starting point the work should proceed until we secure a practice act properly simplified. This is admittedly a matter of great difficulty and it should receive prompt and expert attention.

The work of the courts of inferior jurisdiction is of vast importance in enforcing the demands of justice in the interest of those who suffer most keenly from injustice and in maintaining proper respect for law. Legislation was recently enacted for the purpose of improving the organization of municipal courts in the city of New York and an inquiry is now being conducted under legislative act with regard to criminal courts of inferior jurisdiction in cities of the first class. To a large portion of our population the administration of justice is almost solely represented in these courts and the importance of the just, dignified, and efficient exercise of powers suitably committed to them cannot be too strongly emphasized.

The practice of suspending sentence upon convicted offenders and placing them under the supervision of probation officers is increasing. The State Probation Commission reports that during the year ending September 30, 1908, more

than twice as many juvenile offenders were placed on probation than were committed to State reformatories; the number of men placed on probation was more than twice the number committed to the Elmira Reformatory; and the number of women so placed was six times the number committed to the two State reformatories for women. The present law contemplates the appointment by every court and by every justice in the State of one or more probation officers. So many officers in smaller communities are not needed; and except in cities of the first and second class it might be well to make the services of one or more probation officers, appointed by the county court as required, available to all the courts having criminal jurisdiction within the county.

The enforcement of the laws depends not simply upon proper police administration and the efficiency of prosecuting officers, but in a very large degree upon the alertness and impartiality of magistrates, the integrity of grand juries, and an active public demand that those who from time to time represent the community in the course of judicial administration shall faithfully perform their duties.

The mistake should not be made of attempting to correct evil by new schemes of legislation when the evils result from the failure to enforce existing laws. Inquiry may always be profitably directed to the question whether such failure is due to imperfections in the laws themselves, or to faults of administration.

The reform long ago started in New York with regard to imprisonment for debt should be completed and save in cases of contempt of court, and where it may be necessary to arrest the defendant in order to insure the performance of an act the failure to perform which would be punishable as a contempt, arrest and imprisonment in civil cases should be abolished. The existing law is unsound in principle; the remedy it affords is of slight value; and it is easily made a means of extortion and oppression in the case of the ignorant and friendless poor.

Suitable provision should also be made for the proper punishment of extortion in connection with loans upon salaries or wages, as an aid to thrift and as a measure of protection

against efforts to prey upon the necessities of those dependent upon the income from their daily toil.

STATE INSTITUTIONS

Charities.— There is a constant demand for improved and increased facilities for the State's charities. At the last session the Legislature provided for the acquisition of sites for the Eastern New York State Custodial Asylum and for the New York State Training School for Boys. Provision should be made by suitable appropriation for these institutions.

Provision should also be made for the prompt repair of the losses recently sustained by some of our institutions through fire. In connection with the serious loss which has thus occurred at the Rome State Custodial Asylum, the question has been raised as to the future distribution among the State institutions of the various classes of the feeble-minded cared for by the State. The question of their wise segregation should be carefully considered.

Insane Asylums.— A new hospital for the insane should be provided near New York city at as early a date as possible. By far the greater number of insane persons come from the metropolitan district and can be advantageously and most humanely treated near New York. The remedy by way of transfer of patients to upstate institutions has been used to the fullest extent practicable and additional hospital accommodation in the southeastern part of the State is urgently needed. The net increase in the number of insane patients under State care at the close of the last fiscal year was 1,043, against an average of 715 for the five preceding years.

Prisons.— It appears that during the past fiscal year the daily average population of the three State prisons, to wit, 3,817, was the largest in the history of these institutions, and exceeded that of the previous year by 316. The large increase in the cost of supplies presents a serious question as to the continued maintenance of the prisons, in accordance with present standards, under the present appropriations. I submit this matter to your most careful consideration so that such provision as may be found to be needed for proper prison management may be made available during the current year.

The question of the extension of the prison system of the State so as to secure improved discipline both with respect to occupation and reformatory measures in the case of those confined in county penitentiaries under conviction for felonies or misdemeanors, deserves careful study, and such means of control as may be found practicable should be secured.

Board of Fiscal Control—Salaries, Purchases.—It is not advisable that particular salaries of subordinate employees in State institutions should be fixed directly by the Legislature. These matters of detail, within the limits fixed by the legislative appropriations, should be dealt with through administrative agencies. But there should be uniformity with respect to positions of a similar sort, and one branch of the State service should not be found competing with another or suffering in comparison with another. There should be both flexibility and a reasonable degree of harmony. This can be effected by establishing a board of control in which will be represented the different classes of State institutions and their supervising authorities, through whose final action the salary classifications may from time to time be determined.

The financial operations of the institutions should be harmonious wherever practicable, and the same board may be used to effect this purpose. Such a board might act with regard to purchases of supplies required in the various institutions in order to secure whatever advantages are possible from bringing these purchases under one system. The action of the board, both with regard to salaries and purchases, may be made subject to the approval of the Governor and the Comptroller.

QUARANTINE COMMISSIONERS AND PORT WARDENS

The necessary increase in governmental agencies should make us the more solicitous to simplify organization wherever possible. I again recommend that the offices of Quarantine Commissioners should be abolished and that their duties should be devolved upon the Health Officer of the Port. The general supervision by the Health Officer of quarantine estab-

lishments makes it appropriate that he should have the care of the buildings and improvements on the islands where persons subject to quarantine are detained. The board of Quarantine Commissioners is unnecessary. The law should also be amended so that the expenses of the Health Officer should be provided for by appropriation and his fees covered into the State treasury.

I also renew my recommendation that the board of Port Wardens be reduced to five members in lieu of the present board of nine. The additional places are not needed.

I have not filled the vacancies occurring in these boards as they make easier the appropriate action of the Legislature. And in order that there may be no unnecessary delay in organizing the work upon an improved basis I suggest that if these recommendations meet with the approval of your honorable body, they be acted on early in the session.

At the last session of the Legislature there was a notable reduction of the volume of legislation, particularly with respect to special acts. Special legislation is not only objectionable because of its partiality but also because of the extent to which it withdraws attention from the consideration of general bills. It is gratifying to note the growing recognition of the importance of this matter and I trust that your honorable body will continue the policy of limiting special acts, so far as possible, and of securing legislation that is general and impartial.

CHARLES E. HUGHES

Recommending Legislation Giving to the Superintendent of Insurance Authority to Conduct the Liquidation of Insolvent Insurance Companies

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 8, 1909

TO THE LEGISLATURE:

In my annual message I recommended that authority should be given to the Superintendent of Insurance to conduct the

liquidation of insolvent insurance companies in a manner similar to that which has been authorized in the case of banking institutions. The serious delays and enormous waste connected with receiverships, both of banking and of insurance corporations, has directed attention to the advisability of providing suitable means for economical and speedy liquidation through the agency of the respective State departments. Last year the Banking law was amended so as to provide for liquidation of banking corporations by a businesslike method, and the wisdom of the provision has already been demonstrated by experience. Similar exigencies arise in connection with insurance corporations and should be dealt with in a similar way.

Not only is it desirable to provide for the economical and speedy liquidation of insolvent institutions of either class, but also to make proper provision that the superintendent of the appropriate department, where the corporation is delinquent or the interests of depositors or policyholders are in jeopardy, may at once take possession of the property of the corporation and assume charge of its affairs so that he may be in a position to conserve its assets and take such steps as will prevent unnecessary waste or spoliation. The legislation of the last session with regard to banks provided for this and gave broad powers to the Superintendent of Banks to take possession of the property and business of banking corporations whenever there was good reason to conclude that they were in an unsafe condition, or that it was unsafe or inexpedient for them to continue in business. It remains to provide a similarly effective remedy in the case of insurance corporations.

Circumstances may make the exercise of such a power of the greatest importance to all parties in interest, even though the institution may be solvent, and the exercise of such authority may frequently save a corporation from ruin and make easy the resumption of business under proper safeguards. The protection which is sought to be given to our citizens by the supervisory powers of the State department is not complete unless the Superintendent is in a position, in times of

emergency, at once to take custody for purposes of conservation, and ample authority for this purpose should be afforded.

Certain recent transactions relating to a long-established and solvent life insurance corporation have emphasized the need of such legislation. All the assets of the New York corporation appear to be claimed, under a reinsurance contract, by an insurance corporation of another State. Legal proceedings have been instituted attacking the transaction in question, and a receivership has been asked for. In such a case it ought to be a simple matter to secure proper custodial care through the State department and to take summary steps to protect the interests of the policyholders, without recourse to a receivership.

Fortunately, in the case stated, the Superintendent of Insurance, with the co-operation of the Attorney-General, has been able to procure an agreement whereby the assets of the New York corporation have been, or will be, returned to this State and placed within the control of the Superintendent of Insurance. The matter is too important, however, to be left in this shape, and the acts of the Superintendent for the purpose of protecting the policyholders from loss, should be ratified and appropriate powers should be given him to take charge of the concerns of insurance corporations so situated. Provision should also be made by which all arrangements for the transfer of assets from one insurance company to another, with the design to bring about a practical merger or, in effect, to turn over the business of the one corporation to the other, should require the approval of the Superintendent of Insurance, under appropriate restrictions.

I therefore recommend that such legislation be enacted as will give to the Superintendent of Insurance powers with respect to taking possession of the property and affairs of insurance corporations and their liquidation, analogous to the powers conferred last year upon the Superintendent of Banks. While these powers should be broad in order that complete protection may be given to policyholders through the machinery of the Department, without making it necessary to have receivers appointed, there should also be proper provi-

sion for recourse to the courts as a safeguard against unjust or arbitrary action. The existence of such powers will be found, it is believed, to make their exercise rarely necessary, as the provision of an effective remedy will make less likely the development of situations to which it may be applicable.

In view of the importance of the matter I respectfully urge that it receive as early attention as may be possible.

(Signed) CHARLES E. HUGHES

Recommending Legislation to Expedite Legal Proceedings for the Collection of Special Franchise Taxes

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 10, 1909

TO THE LEGISLATURE:

Present conditions with respect to legal proceedings for the collection of special franchise taxes are deplorable. Thousands of cases are pending involving assessments amounting to millions of dollars, but the methods employed have been dilatory and wasteful.

The practice has been to procure, generally by stipulation, the appointment of referees to take testimony as to matters in dispute. This in itself has been a serious cause of delay and it appears that in most of the pending cases, many of them of long standing, no progress has been made and they are in the same position as when the referees were appointed. In addition, the practice of procuring the appointment of the same referees in numerous cases has brought about a situation which makes it impossible in any event to have the cases prosecuted with reasonable dispatch.

The result is that the State with regard to these important rights is found to be enmeshed in a web of proceedings, and if we are to bring the litigation to an end and have the rights of the litigants determined with proper promptitude, measures of relief must be provided without delay. The Attorney-General has made a careful examination of the state of

affairs in this department of his office and has communicated to me the results of his examination and his recommendations for the purpose of ending the present intolerable conditions. His letter is as follows:

“ STATE OF NEW YORK — ATTORNEY-GENERAL’S OFFICE

Albany, March 8, 1909

“ HON. CHARLES E. HUGHES, *Governor of the State of New York, Albany, N. Y.*

“ DEAR SIR:— I beg to call your attention to the department in my office designated as the special franchise tax bureau, and make a statement regarding the multitude of unsettled matters in this bureau and submit herewith a proposed amendment, which, if enacted into a law, will aid me in dealing with this important matter which is of grave interest to every taxpayer of the State.

“ I find upon examination that there are pending and at issue approximately three thousand certiorari proceedings to review special franchise tax assessments as fixed by the State Board of Tax Commissioners for the years 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907 and 1908. Many of the proceedings are in the same status today as when instituted so far as determining the amount of tax due. There are uncollected special franchise taxes in the City of New York alone, accumulated since 1900, which amount in the aggregate to the sum of more than \$26,000,000. This is for the City of New York alone, and in addition to that amount there are special franchise taxes in litigation in nearly every tax district in the State, outside of Greater New York, amounting to many millions of dollars. Nearly every Telephone and Telegraph, Electric Light, Electric Railroad and Steam Railroad Company has instituted proceedings to review the special franchise assessment throughout the many towns in each county of the State through which such lines run.

“ Section 253 of the Tax law, which provides for the proceedings to follow after a return has been made to the writ of certiorari issued out of the court, reads as follow:—‘ If

upon the hearing it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.'

"Under this section in its present form, all proceedings brought to review a special franchise assessment are in the first instance by the court sent to a referee to take testimony and report, which necessitates a motion for the confirmation of the referee's report; in many instances, the matter is sent back to the referee for further proof and again the proceedings come up for confirmation. To obtain a final determination on any contested proceedings to review a special franchise tax assessment under the Tax law in its present form consumes upwards of a year and one-half.

"Section 45a of the Tax law authorizes the State Board of Tax Commissioners to appear by counsel to be designated by the Attorney-General, the compensation of such counsel together with the necessary and proper expenses and disbursements, including evidence of experts, etc., is made a charge against the tax district, and as each town comprises a tax district, it is apparent what a tremendous cost is to be incurred chargeable to the tax districts throughout the State for the enforcement and collection of special franchise taxes due the State, which accumulation of taxes covers the last eight years.

"The records of this department disclose the fact that in many instances referees living in one extreme end of the State are appointed to take proof in special franchise matters located in the other end of the State, necessitating heavy traveling expenses as well as their ordinary fees for referees. In some cases, a referee is named in at least 40 to 50 of these proceedings, covering as many tax districts from one end of the State to the other. It is impossible, of course, to hold hearings in but one of these tax districts in any one day before that referee and if all those proceedings are tried out, it would take several years to bring them all to trial

before him. In the City of New York so many of these proceedings have been referred to individual referees that if they were to sit every day it would take them several years to try these cases. These references mean delays, and as nearly every matter referred to these referees for the collection of taxes is at the present time in a stagnant condition with nothing being done, I am convinced that these taxes cannot be advantageously collected under the Tax law in its present form. In some of the proceedings pending the taxes are paid but in amount the majority are unpaid while all are in litigation. Four-fifths of the cases brought during these years and referred, are in exactly the same position today as when the order of reference was made.

"The statute, as it stands, provides that the court 'may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law.' Notwithstanding the above provision I find many of the orders entered appointing the referee direct him to hear, try and determine the issues raised by the writ and return. In some cases I find two referees have been appointed by the court.

"The records of the special franchise tax bureau are inaccurate, erroneous and in a large percentage of the cases fail to indicate the present status of the pending proceedings.

"In my judgment, the Tax law in its present form, so far as it applies to the review of special franchise tax assessments, is too cumbersome, loose and defective to afford adequate relief.

"The law should be amended so that:

"First:—These causes may be tried by the court. This will result in speedy trials and be a great saving of expense to the tax district.

"Second:—The power to change the place of trial in these matters should be vested in the court, so that the cases may be regularly tried in the county where the franchise exists.

"Third:—It should be made obligatory on the courts to vacate any order of reference heretofore made, upon the application of the Attorney-General.

“Fourth:—The Governor should be empowered to appoint an extraordinary term of the Supreme Court, to be held in any judicial district to try these cases.

“Another reason why these cases should be tried by the courts is that it is litigation of the highest importance and involves important questions of law which should be tried by the court. In addition, the trials would be expedited and an enormous expense to the tax district would be saved. I believe the situation demands that extraordinary terms of court be designated to be held in the judicial districts of the State to hear these tax matters, devoting its exclusive time to such proceedings. The statute provides that every writ of certiorari to review a special franchise tax assessment must be made returnable at the County of Albany (*People ex rel. N. Y. C. & H. R. R. R. Co. vs. Priest*, 169 N. Y. 432), and there is no power, so far as I am able to learn, conferred upon the Governor, under the law in its present form, to appoint an extraordinary term of court to try special franchise tax matters excepting the Court appointed to hear these matters is to be held in the County of Albany.

“I am, therefore, submitting for your consideration a proposed amendment to section 253 of the Tax Law, which provides for the trial of these proceedings within the judicial districts where special franchise is located, which, if passed, and extraordinary terms of court are designated, will, in my judgment, lend a dignity to these proceedings and will expedite the collection of taxes unpaid.

“I most respectfully urge your immediate attention and assistance to secure the passage of the amendment, a copy of which I enclose herewith.

“Very truly yours,

EDWARD R. O'MALLEY

Attorney-General”

I commend to your careful consideration the statements of the Attorney-General and his recommendations to the end that there may be such amendment of the law, consistent with due regard to the authority and jurisdiction of the courts,

as will facilitate the early disposition of the pending proceedings and prevent a recurrence of similar conditions.

(Signed) CHARLES E. HUGHES

**Recommending the Adoption of an Amendment to the
Constitution Providing that in the Computation of
the Debt Limit of the City of New York Certain
Debts be Excluded — Need of New Subways**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 12, 1909

TO THE LEGISLATURE:

The last Legislature adopted a concurrent resolution referring to your honorable body a proposed amendment to the Constitution providing that in the computation of the debt limit of the City of New York there should be excluded debts incurred for such public improvements owned by the city as yield to the city a current net revenue in excess of maintenance, interest and amortization charges. The amendment also provides that any indebtedness heretofore incurred by the city for rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by the city therefrom shall meet interest and amortization installments, the increase in borrowing capacity resulting from the exclusion of such debts to be available only for rapid transit or dock purposes.

The importance of the action of this Legislature upon this matter lies in the fact that unless you approve the proposed amendment and provide for its submission, the people will be unable to act upon it, and the present opportunity will be lost.

In view of the existing situation in the City of New York, the failure to permit the people to adopt, if they desire, this amendment at the next election will involve the assumption of a very heavy responsibility.

The need of additional facilities in New York City is most exigent, and every reasonable means should be adopted to

facilitate their provision. The opportunity to increase the city's power to provide means of intercommunication which are essential to the city's prosperity, to the proper growth of its more sparsely settled districts and to the convenience and comfort of its citizens, by removing self-sustaining properties from the limitation of the city's borrowing capacity, is one which I believe those solicitous for the city's welfare cannot afford to neglect.

There can be no gainsaying the advantage of having new subways built and owned by the city, if the city is financially able to undertake the construction. The authorities should be in a position to plan, and to carry out plans, for comprehensive transit development, and there is no reason why the additional burden of interest charges, incident to construction with money borrowed upon private credit, should be borne if it can be avoided.

The city must have new subways, and if public money is not available for their construction it is proper and necessary that means should be provided by which they can be otherwise constructed upon fair terms. But in any event the authorities should be so armed with all suitable powers for the protection of the city that its serious situation may not be taken advantage of and terms secured which otherwise would not be yielded. Private capital cannot be coerced and will not build in any event upon terms unjust to itself, and the city should be, so far as possible, in a corresponding position. There should be freedom to take that course which, under a fair consideration of all proposals, may be for the city's best interests. It should not be compelled to consent to arrangements for new facilities under conditions which are made the more onerous because of the existence of unnecessary limitations upon its authority.

It is of course of vital importance that the administration of the city should be economical and that all waste and extravagance should be ended, but efforts to secure economy should be intelligent and should not involve dispensing with fair opportunity to secure the actual necessities of our civic life. The proposed amendment to the Constitution is not rash, but provides for the exclusion, in computing the debt

limit, of debts which are taken care of, interest and principal, out of the earnings of the properties in question. In calculating the indebtedness of the city, that is to be excluded which carries itself.

And apart from future improvements of that sort, the exclusion of the indebtedness heretofore incurred for rapid transit purposes, which is abundantly provided for, would constitute an immediate relief to an extent which is far from negligible and certainly should be had.

It should not be overlooked that the amendment provides that "the Legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded (from the borrowing capacity) shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed."

Thus the Legislature in proposing the amendment reserves to itself adequate authority to safeguard the interests of the city by a proper definition of terms and conditions under which the exclusion of debts is to be effected. It practically comes to this: That the city's present investment in the existing subway is perfectly safe, being adequately protected by a sinking fund which will take care of the debt, and it is not fair that this indebtedness should be counted against the borrowing capacity of the city in seeking to provide additional facilities. Debts for other improvements may be excluded only where it appears in accordance with the conditions defined by the Legislature itself that the improvements are clearly self-sustaining through current revenue providing for interest and sinking fund, and that the debts being amply secured should not be regarded as obligations of the city in determining the debt limit. Such debts are not within the policy of the constitutional limitation and may reasonably be excluded from its terms.

The matter is so important that there is no justification in relying upon conjecture, or in depending upon forecasts of the settlement of the existing controversy over the debt limit. This opportunity at least should not be lost and the people should have the right to give to the City of New York this measure of freedom to which it is justly entitled.

I therefore earnestly urge upon you the adoption of a suitable concurrent resolution providing for the submission to the people for approval at the general election to be held this year, of the amendment to section 10 of article VIII of the Constitution proposed by the last Legislature.

(Signed) CHARLES E. HUGHES

Recommending the Making of Suitable Provision With Regard to the Canal Debt Sinking Fund

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 15, 1909

TO THE LEGISLATURE:

I recommend for your consideration the question of making suitable provision with regard to the canal debt sinking fund so that the interests of the State as well as those of investors in its obligations may be properly protected.

Under the Barge Canal act of 1903 (Laws of 1903, Chapter 147), the enactment of which was duly approved by the people, it was provided that the State should issue its bonds in an amount not exceeding \$101,000,000 for the purpose of canal improvement. In order to provide a proper sinking fund the act imposed for each year until all the bonds should be due an annual tax of twelve one-thousandths of a mill upon each dollar of valuation of the real and personal property in the State subject to taxation, for each \$1,000,000 or part thereof in par value of said bonds issued and outstanding in any of said years.

The bonds issued under this act were payable in eighteen years as provided by section 4 of Article VII of the Constitution as it existed prior to the amendment of 1905. The bonds so issued amount to \$2,000,000.

In 1905 the people adopted an amendment to the Constitution which authorized the Legislature to make the term of the bonds thereafter issued fifty years and directed the Legislature "to impose and provide for the collection of a direct

annual tax for the payment of the same" as required by the Constitution.

Accordingly in 1906 the Legislature directed that for the barge canal improvement \$99,000,000 of bonds payable in fifty years should be issued, in lieu of those authorized but not yet issued under the act of 1903. And the Legislature imposed a direct annual tax of four hundred and eighty-one one-thousandths of a mill upon each dollar of valuation of real and personal property subject to taxation for the purpose of providing for the payment of the bonds, interest and principal.

Under this act there have been thus far issued only \$11,000,000 of bonds, but the sinking fund has been built up as though the entire \$99,000,000 of bonds had been issued. That is to say, an annual direct tax sufficient to provide for the payment of the entire \$99,000,000 has been imposed, or the equivalent amount has been appropriated from the general funds as allowed by the Constitution. In addition, the assessed valuation of the taxable property of the State has increased from about \$8,000,000,000 to about \$9,600,000,000. So that not only is the rate excessive so far as concerns the requirements of the bonds actually issued, but it is laid upon an increased valuation.

This is bad financiering and results in a setting aside of amounts in the sinking fund which are not needed for the proper protection of the bonds and will provide an unnecessary accumulation which must be held by the State for many years before the bonds can be retired.

In order to provide for the payment of \$1,000,000 at the end of fifty years, with annual interest at 3 per cent., less than \$40,000 is annually required. The bonds issued under the act of 1906 are as follows: In 1906, \$1,000,000; in 1907, \$5,000,000; in 1908, \$5,000,000. Provision has thus far been made for a further issue of \$10,000,000 of bonds this year.

The sinking fund payments actually needed up to this time in order to make adequate provision for these bonds would be little over \$1,500,000. Instead of this, we have had to provide for this purpose, upon the present basis, about \$12,400,000. And unless the tax rate is changed, we must

provide this year for a further addition to the canal debt sinking fund, about \$4,500,000 either by direct tax or by equivalent appropriation from our general funds. Such an excess of accumulation, which must be held for a long period before it can be applied to the payment of the bonds, cannot be justified. It is a serious danger rather than a proper security.

The present rate of progress upon the canal work is gratifying and indicates that within a few years the remaining bonds will be required. But the tax should be adjusted so that it may be entirely sufficient and at the same time be fixed with due regard for the requirements as they actually exist. It is not proposed to disturb the present sinking fund, but it would seem advisable to fix for the future a proper rate of tax, following the precedent of the act of 1903, for each 1,000,000 or part thereof in par value of bonds that may be issued and outstanding.

There can be no question as to the authority of the Legislature to fix this tax. It may act under the same constitutional authority under which it acted in 1906, and its power and duty under the constitutional amendment of 1905 is to provide for an annual direct tax sufficient to pay the interest on the debt as it falls due and the principal of the debt "within fifty years from the time of the contracting thereof." The security of investors will thus be amply protected by the accumulation of a sinking fund entirely adequate to provide for all bonds issued, while the risks and improprieties involved in creating a sinking fund so grossly excessive, will be avoided.

This matter should be put upon a sound basis, and I respectfully submit the subject for your consideration.

(Signed) CHARLES E. HUGHES

IV

VETOES

IV

VETO MESSAGES

Increasing the Salary of the Bookkeeper of the Sheriff of Dutchess County

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, February 24, 1909

TO THE ASSEMBLY:

I return herewith without my approval Assembly bill No. 399, entitled

“An act to amend chapter eighty-two of the laws of nineteen hundred and three, entitled ‘An act to make the office of sheriff of Dutchess county a salaried office, and to regulate the management of said office,’ in relation to salary of bookkeeper.”

This bill increases the salary of the bookkeeper of the sheriff's office in Dutchess county from \$600 to \$750 a year. The compensation of the bookkeeper of the sheriff's office should be determined by the local authorities, and if the law be amended it should so provide. It is not desirable that there should be special legislation of this sort fixing the salary of minor officers.

(Signed) CHARLES E. HUGHES

**Increasing the Number of Justices of the Supreme Court
in the Third Judicial District**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 8, 1909

TO THE SENATE:

I return herewith, without my approval, Senate bill No. 252, entitled

“An act to increase the number of justices of the supreme court in the third judicial district of the state and to provide for an additional justice therein.”

There does not appear to be any such exigency as would require the creation of an additional judgeship in the third judicial district at this time. Until the future needs of the district can be more definitely determined than is possible at present, such relief as may be needed can readily be secured under the provisions of the Judiciary law.

(Signed) CHARLES E. HUGHES

**Making the Office of County Clerk of Tompkins County
a Salaried Office**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 19, 1909

TO THE SENATE:

I return herewith without my approval Senate bill No. 192, entitled

“An act to make the office of county clerk of Tompkins county a salaried office and to regulate the management thereof.”

The general purpose of this bill is in harmony with the policy of the State, but the bill in fixing the salaries of subordinate officials transgresses an important principle.

There is general recognition of the evils of special legislation, but the difficulty of curtailing it is very great because in a large number of cases the special legislation is asked in order to escape the hardship of the restrictions of former special legislation which have outlived their usefulness. Special acts thus become necessary because of the minuteness of the provisions of earlier acts.

This has been conspicuously illustrated in the case of salaries paid to subordinate officials in different communities. Instead of establishing local government with suitable powers and responsibility, communities have sought to protect themselves against their own elected officers by having the Legislature restrict their powers in a variety of detail. The result, however, is that when changes are needed the appeal must be made to the Legislature instead of to the local authorities, and there is an absence of that proper responsibility to the community with respect to changes in which the community alone is interested. Thus, salaries of subordinate officers plainly should be fixed by the local authorities and not by the Legislature. And experience shows that where the Legislature instead of fixing the salary absolutely, fixes a maximum salary, it is the latter which is actually paid and the Legislature from time to time is asked in effect to increase the salary by increasing the maximum allowed. The notion that the legislative restriction is a protection proves in practice to be a fallacy, as shown by the multitude of statutes raising salaries. The difference is that they are raised by legislative acts instead of being dealt with by responsible local boards.

During the past two years I have urged that bills with regard to the salaries of subordinate officers, should leave the matter to the local authorities so that to this extent at least we might put a stop to unnecessary special legislation and re-enforce the autonomy of our local communities.

As an illustration of a suitable provision with regard to subordinate salaries I may refer to the clause in Assembly bill No. 1670 recently passed by the Legislature and approved by me this day, making the office of sheriff of Onondaga county a salaried office, as follows:

"The under sheriff, deputies, attendants and other subordinates shall receive such salaries or compensation for services as shall be fixed and determined by the board of supervisors of said county."

In view of the position which I have taken regarding this matter, in acting upon many bills, I cannot consistently approve the bill now before me.

(Signed) CHARLES E. HUGHES

Dividing the County of Clinton into Three School Commissioner Districts

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 19, 1909

TO THE ASSEMBLY:

I return herewith without my approval, Assembly bill No. 639, entitled

"An act to divide the county of Clinton into three school commissioner districts."

This is a special act fixing the school commissioner districts of Clinton county.

There is a provision in the General Education law with regard to the alteration of school commissioner districts. If it is not sufficiently broad to give the board of supervisors in the several counties the authority they should possess for making changes in districts, it should be amended. But the matter should be left, under appropriate general law, to the county authorities. They would be best able to judge of the propriety and convenience of a proposed alteration and would be accountable to the people of the county for their

decision. I do not believe that such a matter should be dealt with in detail by a special act of the Legislature.

(Signed) CHARLES E. HUGHES

Making the Office of Sheriff of Tompkins County a Salaried Office

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 19, 1909

TO THE SENATE:

I return herewith without my approval Senate bill No. 191, entitled

“An act to make the office of sheriff of Tompkins county a salaried office, in part, and to regulate the management thereof.”

This bill is disapproved upon the ground that it fixes the salary and the compensation of certain subordinate officials which should be left to the determination of the local authorities. The reasons are the same as those which I have more fully stated in my message to the Senate with regard to Senate bill No. 192, also disapproved.

(Signed) CHARLES E. HUGHES

**Authorizing the Trustees of the Village of Cohocton to
Construct Cement or Concrete Walks**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 23, 1909

TO THE SENATE:

I return herewith without my approval Senate bill No. 943, entitled

“An act to authorize the trustees of the village of Cohocton, county of Steuben, to construct cement or concrete walks in such village and assess one-half the cost thereof on the adjoining property.”

There appears to be no necessity for this act, as the general village law provides authority for the construction of such walks as may be needed.

(Signed) CHARLES E. HUGHES

In Relation to Elections in the Village of Charlotte

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 28, 1909

TO THE ASSEMBLY:

I return herewith without my approval Assembly bill No. 824, entitled

“An act in relation to elections in the village of Charlotte, Monroe county.”

The village of Charlotte by reincorporation, legalized by chapter 65 of the laws of 1875, became subject to the General Village law. This general law, now chapter 64 of the Consolidated Laws, provides for the conduct of village elections. If further safeguards should be provided, they should be supplied by appropriate amendment of the general law and not by a special, independent enactment applicable, as in the case of this bill, to a single village. Otherwise, instead of adopting a suitable remedy, we should start a new series of unnecessary special acts. The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

VETO MEMORANDA

Statement of Appropriations

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 22, 1909

Memorandum filed with Assembly bill No. 1906 (Senate Reprint No. 1577), entitled

“An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations.”

The total appropriations (exclusive of reappropriations, of contributions to canal and highway debt sinking funds and of payments from the sinking funds, from sundry trust funds, and from proceeds of bond sales) which have been made by the Legislature this year amount to..... \$38,456,909 99
 The bills and items disallowed by me amount
 to 4,488,886 06

Leaving the total of said appropriations as
 allowed \$33,968,023 93
 Add contributions from the general fund in
 lieu of direct tax to
 Canal debt sinking fund.... \$1,044,000 00
 Highway debt sinking fund.. 1,053,200 00

2,097,200 00

Making a total of appropriations..... \$36,065,223 93
 As compared with the total
 appropriations of 1908 as
 approved (exclusive of
 sinking funds) \$29,309,401 29
 And contributions last year
 from the general fund to

Canal debt		
sinking fund	\$5,841,800 00	
Highway debt		
sinking fund	450,000 00	
	<hr/>	\$6,291,800 00
		<hr/>
		\$35,601,201 29
Increase in 1909.....		<hr/>
		\$464,022 64
		<hr/>

The appropriation bills passed by the Legislature this year exceeded in amount the appropriations approved last year (exclusive of sinking fund contributions) by \$9,147,508. Extensive reductions have been imperatively required. The Executive has the power to object to any item of appropriation and thus, after adjournment of the Legislature, disallow it. But he cannot reduce an item. Where a single item in the general appropriation or supply bill covers an increase of allowance for a given purpose, the item cannot be reduced but must either stand or be wholly disallowed. A general readjustment is therefore impracticable and the burden of curtailment must be borne by those specific items of appropriation which can be disallowed without dislocating administration.

The items and bills disapproved by me are as follows:

Supply Bill.....	\$956,236 06	
Appropriation Bill.....	107,000 00	
	<hr/>	\$1,063,236 06

Special Bills:

Starch Factory Creek improvement.....	9,000 00
Powell Creek improvement.....	12,000 00
Monument at New Berne, N. C.....	10,000 00
Delaware River improvement, Deposit.....	15,000 00
Delaware River improvement, Port Jervis....	15,000 00
Delaware River improvement, Sullivan County	10,000 00
Grant Cottage, additional land.....	6,450 00
Fence, Lake George Battle Ground.....	1,500 00
Training School for Boys.....	636,000 00

Investigation of Milk Products.....	\$10,000 00
Monument, Martin Van Buren.....	10,000 00
Flushing and Jamaica Bay terminal facilities..	5,000 00
Bill for Charitable Institutions (total \$546,- 065), items deducted.....	86,750 00
National Guard Convention.....	5,000 00
Letchworth Village (total \$80,000), items de- ducted	50,000 00
Albany Armory.....	150,000 00
Forty-seventh Regiment Armory.....	285,000 00
Agricultural Experiment Station.....	40,000 00
Naval Boat House, Buffalo.....	20,000 00
Site for Hospital for the Insane.....	175,000 00
Bill for Hospitals for Insane (total \$1,603,- 323), items deducted.....	226,950 00
New State Prison, Comstock (total \$500,000), item deducted.....	150,000 00
State Prisons (total \$77,500), item deducted..	22,000 00
Capitol Power House.....	475,000 00
Education Building.....	1,000,000 00
<hr/>	
Total	\$4,488,886 06
<hr/>	

Many of these, such as the items providing for hospitals, charities, armories and various public purposes represent worthy objects. But it must be remembered that apart from the items thus disallowed, large appropriations are made for purposes within the same classes respectively. In the case of hospitals for the insane, for example, \$1,376,373 are allowed in the special hospital bills in addition to the maintenance items in the general bills. Besides \$459,315 appropriated by the special bill for charitable institutions, there have been signed this year bills for the new building of the Rome Custodial Asylum (\$165,000), and for the extension of the Raybrook Tuberculosis Hospital (\$276,300). The State Fair bill passed at this session carried \$278,000 for improvements and new buildings. Large appropriations have also been made for agricultural purposes. With respect to the needs of the

National Guard, in addition to \$120,000 carried by the Supply bill for repairs and improvements, \$275,000 was appropriated during the session for the new rifle range. For patriotic purposes there have been various appropriations.

The further appropriations for the same general objects which were called for by the items which have been disapproved, could not be justified at this time. Certain other items disallowed represent payments not required this year.

Despite these reductions the total budget exclusive of sinking fund contributions exceeds that of last year by \$4,658,-622. Fortunately under the statute passed at the last session, a large saving has been effected in the contribution to the canal debt sinking fund. The net increase over last year's appropriations, including the contributions to the sinking fund, thus amounts to \$464,022.64.

In every branch of State work needs are constantly disclosed and new opportunities are continually presented by various groups of public spirited citizens, each anxious that the State should respond in its various undertakings to the demands of increased knowledge and should make better provision for the conduct of its enterprises. We also are paying for many permanent improvements out of income. So that the cost of new establishments which will serve their purpose for a generation or more is defrayed out of the income of the short time which elapses during their construction. A number of concurrent expenditures of this sort causes a large increase in annual appropriations apart from what may be termed the current expenses and fixed charges of government.

We cannot meet these demands properly and make reasonable advance unless we have economical administration.

We have reason to be gratified by the sound financial condition of the State but the pressure of various demands must not make us unmindful of the limits of our income. There must be insistence in every department upon the strictest economy, and the constant aim should be to reduce expenses wherever possible without loss of essential efficiency.

There should also be provided some permanent method for comparative examination of departmental budgets and proposals for appropriations in advance of the legislative session

so that the Legislature may be aided by preliminary investigation and report in determining, with just proportion, the amounts that can properly be allowed.

(Signed) CHARLES E. HUGHES

The Annual Supply Bill — Items Vetoed

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 22, 1909

MEMORANDUM filed with Assembly bill No. 1906 (Senate Reprint No. 1577), entitled

“An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations.”

STATEMENT of items of appropriations of money, contained in said bill, which are severally objected to, to wit:

On pages 15 and 16: “For the comptroller, for furnishing steel filing cases for original tax returns, deeds, abstracts of title, books and records relating to land titles, taxes and tax sales, and for furniture and other necessary repairs in the land tax bureau, fifteen thousand dollars (\$15,000), or so much thereof as may be necessary.”

On page 61: “For the adjutant-general to cover expense of construction of mezzanine floors in rooms two hundred nine and two hundred ten, capitol, occupied by first, second, personnel and third divisions, adjutant-general’s office, and for providing necessary fireproof furniture and filing cases, five thousand dollars (\$5,000), or so much thereof as may be necessary.”

On page 66: “For a mezzanine floor in the office of the commission in the capitol, twelve hundred dollars (\$1,200), or so much thereof as may be necessary.”

In view of the proposals that are under consideration with regard to the State Hall, and of the possible changes in the

housings of departments upon the completion of the Education Building, these expenditures are deemed inadvisable at this time.

On page 26: "For the erection and equipment of the buildings for the agricultural school at Morrisville, pursuant to the provisions of chapter two hundred and one of the laws of nineteen hundred and eight, as amended by chapter one hundred and eight of the laws of nineteen hundred and nine, the sum of thirty-five thousand dollars (\$35,000)."

It does not satisfactorily appear that the exigencies of the school require the appropriation this year. But in any event, in view of the present demands upon the State and of the amount now being expended for secondary agricultural education, this outlay must be deferred.

On page 27: "for fencing and painting, two thousand five hundred dollars (\$2,500);"

On page 28: "for construction of annex to stable and carriage building, forage building and blacksmith shop, ten thousand dollars (\$10,000); for construction of live stock building, thirty thousand dollars (\$30,000); for construction of poultry building, thirty thousand dollars (\$30,000); for moving grand stand, track and club house, fifty thousand dollars (\$50,000), to become available October first, nineteen hundred and nine; for construction of live stock buildings, two hundred thousand dollars (\$200,000), to become available May first, nineteen hundred and ten."

These items for the State Fair cannot be allowed at this time. By special bill there has already been appropriated this year for the State Fair the sum of \$278,000. The Supply bill, in addition to appropriations for current expenses, provides \$42,000 for further improvements which are needed this year. The additional appropriations in the items above set forth, in justice to other demands upon the State, must be deferred. The fencing and painting required can be taken care of out of the general fund "for maintenance and improvement of grounds."

On page 33: "For deficiency in the appropriation for cities, academies, academic departments and libraries, seventy

thousand dollars (\$70,000), or so much thereof as may be necessary, to apportion an additional one-half cent per day for the attendance of academic pupils in academic departments of cities, union schools and academies as shown by their annual reports for the school year ending July thirty-first, nineteen hundred eight."

The appropriation with regard to which the "deficiency" referred to in this item exists, provides for certain fixed apportionments after which the remainder of the appropriation is to be divided among schools and academies on the basis of attendance of academic pupils. These fixed apportionments have been made and for a number of years the surplus was sufficient to pay two cents per day on the basis of such attendance. But last year the surplus was sufficient to pay only one and one-half cents a day. The difference is the alleged "deficiency." But it is manifest that there is no real deficiency. For the State assumed no obligation in the matter, but simply made provision for a division of whatever surplus might remain after the required apportionments were made. It is not proper policy that where a convenient arrangement is thus made for the distribution of a possible surplus, this should be regarded as creating a State obligation so that the State is bound to make good a so-called "deficiency" when the surplus falls off.

On page 44: "For the land-purchase board as originally defined by chapter ninety-four of the laws of nineteen hundred and one, and the several acts amendatory thereof and supplemental thereto, including the statutory consolidation law, there is hereby appropriated the sum of one hundred thousand dollars (\$100,000) for the purchase of lands within the Adirondack park."

It is important that we should extend our forest purchases as rapidly as possible. But this must be done consistently with other State needs. The Supply bill carries \$200,000 for this purpose to be paid for out of bonds; and the foregoing item of \$100,000 as a charge upon income cannot properly be allowed at this time.

On page 60: "For general expenses of the national guard and office of the adjutant-general to reimburse expenditures

made in connection with obsequies of Governor George Clinton and celebration of the two hundred and fiftieth anniversary of the settlement of the city of Kingston, three thousand six hundred fifty dollars (\$3,650), or so much thereof as may be necessary."

On page 60: "For general expenses of the national guard and office of the adjutant-general to reimburse expenditures made in connection with centennial celebration at Nunda and Salamanca, one hundred fifty-five dollars ninety-six cents (\$155.96), or so much thereof as may be necessary."

On pages 60 and 61: "For general expense of the national guard and office of the adjutant-general to reimburse expenditures made in connection with mobilization of troops at Albany participating in inaugural ceremonies January first, nineteen hundred nine, two thousand seven hundred three dollars nine cents (\$2,703.09), or so much thereof as may be necessary."

These may be charged against the general fund.

On page 71: "For constructing, repairing and maintaining highways and bridges on the various Indian reservations of the state, twelve thousand dollars (\$12,000), or so much thereof as may be necessary."

On page 72: "For the repair and improvement of the highway between Childwold and Childwold Station, in the town of Piercefield, in the county of Saint Lawrence, two thousand five hundred dollars (\$2,500), or so much thereof as may be necessary."

On page 72: "For the repair and improvement of the highway known as the state road, between South Colton and Piercefield, in Saint Lawrence county, four thousand dollars (\$4,000), or so much thereof as may be necessary."

On page 74: "For the improvement of the highway leading to the state dam at Stillwater, Herkimer county, six thousand dollars (\$6,000), or so much thereof as may be necessary."

On pages 74 and 75: "For improving that portion of the highway in the town of Edinburg, county of Saratoga, known as 'Glass Mountain Road' which passes for several miles through lands owned wholly or in part by the state of New

York, one thousand dollars (\$1,000), or so much thereof as may be necessary."

These items are placed under the head of "Department of Public Works." But we now have a Highway Commission, and outlays for the repair and improvement of highways should be expended under the supervision of that commission and pursuant to the provisions of the general law. If this law is inadequate to provide for all State obligations it should be amended, and special items of this sort should be omitted from the Supply bill.

On pages 90 and 91: "For the payment of the several amounts adjudged to be paid to the Potsdam Red Sand Stone Company and others by the judgment rendered November twenty-fourth, nineteen hundred eight, in an action in the supreme court of Saint Lawrence county, wherein Ogden H. Tappan and Edwin A. Merritt, junior, were plaintiffs and the Clemence Construction Company, the people of the State of New York, and others, were defendants, on account of liens against contract of the Clemence Construction Company for construction of the main building of the Agricultural school at Canton, including interest on such several amounts, and including cost of readvertising, services of a watchman, insurance and other miscellaneous items of expense, twelve thousand dollars (\$12,000), or so much thereof as may be necessary. Interest on such several amounts to be computed and paid from the twenty-fourth day of November, nineteen hundred eight, but not beyond the twentieth day after this appropriation becomes available. The said parties to above action receiving relief hereunder to subrogate the state of New York to all their rights, and the amounts so advanced to creditors to be recovered by action against or settlement with the Fidelity and Deposit Company of Maryland, surety for said Clemence Construction Company."

On page 92: "To the Merriam Manufacturing Company of Syracuse, to reimburse it, for materials furnished, to the amount of three hundred seventy-five dollars and interest since January thirty-first, nineteen hundred eight, to the Clemence Construction Company, now a bankrupt and used in the construction of the New York State School of Agriculture at

Canton, four hundred ten dollars (\$410), or so much thereof as may be necessary. The said The Merriam Manufacturing Company shall subrogate the state of New York to all its rights as against the said Clemence Construction Company and its surety, the Fidelity and Deposit Company of Maryland."

The obligation of the State is defined by the judgment and its directions may be met by payments out of funds in the Comptroller's hands.

On page 94: "To the New York monuments commission, for transportation to Chattanooga of fifty survivors of the New York regiments represented in the Chattanooga campaign, October and November, eighteen hundred sixty-three, to be designated by their respective regimental organizations, to attend the dedication of the monument erected on Lookout mountain, together with the governor and invited guests, ten thousand dollars (\$10,000), or so much thereof as may be necessary, to be paid by the treasurer on the warrant of the comptroller on vouchers approved by the commission."

Major-General Daniel E. Sickles, President of the New York Monuments Commission, requests that this item be disallowed in view of the fact that the appropriation is inadequate to meet the expense of a suitable dedication.

On page 94: "To Hobart Krum, Daniel D. Frisbie, J. Edward Young, W. E. Bassler, Dow Beekman and Charles W. Vroman, committee for markers on the sites of the upper and middle forts in the Schoharie valley, in the towns of Fulton and Middleburgh, to mark and preserve the places where the patriots of the revolution held in check the British and Indians, five thousand dollars (\$5,000), to be paid by the treasurer on the audit and approval by the comptroller."

The object of this item is praiseworthy. But in view of the demands upon the State and the heavy amounts appropriated for patriotic purposes, it cannot be allowed.

On page 9: "For the expenses of legislative committees, twenty-five thousand dollars (\$25,000), or so much thereof as may be necessary, to be paid by the state treasurer upon the warrant of the comptroller and the certificate of the duly

authorized officer or officers of any such committees, as authorized by resolution."

On page 9: "For improvements, alterations, repairs to furniture and furnishings, and furniture for the legislative rooms of the assembly, ten thousand dollars (\$10,000), or so much thereof as may be necessary, to be paid by the treasurer upon the warrant of the comptroller and the certificate of the speaker and clerk of the assembly."

On page 14: "For compensation and expenses of expert accountants employed by the comptroller in special investigations, five thousand dollars (\$5,000), or so much thereof as may be necessary."

On page 14: "To refund to Martin B. Hosley, of Wells, Hamilton county, one hundred thirty dollars (\$130), or so much thereof as may be necessary, amount of penalty and interest paid the forest, fish and game commission May twenty-eighth, eighteen hundred ninety-seven, for alleged trespass in cutting timber on lot five, range four, Leffert's tract, Palmer's purchase, rear division, town of Wells, county of Hamilton, title of state in land being afterward canceled by comptroller."

On page 15: "For the comptroller, to pay the claim of M. Edward Silverstein, owner of the Catskill Daily Mail, designated by the board of supervisors to publish the concurrent resolutions; which designation was declared invalid by court, four hundred sixty-four dollars (\$464), or so much thereof as may be necessary."

On page 18: "For Charles F. Bostwick, for services and expenses as special counsel in the case of People against The Federal Bank since January first, nineteen hundred seven, five thousand dollars (\$5,000), or so much thereof as may be necessary, same to be paid on the certificate of the attorney-general."

On pages 22 and 23: "For deficiency in the appropriation made by chapter four hundred sixty-five of the laws of nineteen hundred eight, for the actual and necessary incidental expenses as provided by article twelve, chapter nine, laws of nineteen hundred nine, being the Agricultural Law, relating to

agricultural information, three thousand dollars (\$3,000), or so much thereof as may be necessary."

On page 24: "For the department of agriculture, to pay the claim of John Rainey, for cattle killed by legal order of the commissioner, four hundred dollars (\$400)."

On pages 25 and 26: "For animal stock, tools, farm machinery, vehicles, icehouses, and such buildings as may be necessary for housing swine and poultry and for the completion of the dairy building, ten thousand dollars (\$10,000);"

On page 28: "For deficiency in the appropriation for the actual and necessary traveling expenses of the state architect and his employees in the performance of their official duties, four thousand five hundred dollars (\$4,500), or so much thereof as may be necessary."

On page 30: "and the further sum of one thousand dollars (\$1,000) is also appropriated for the same purpose."

On page 30: "For deficiency in salary, two employees, one hundred dollars each, two hundred dollars (\$200)."

On page 39: "and in addition to the foregoing reappropriations, for the same purpose, the sum of fifteen thousand dollars (\$15,000), or so much thereof as may be necessary."

On page 41: "For the purpose of printing and distributing hunters' licenses, blanks and blank books relative thereto, together with an allowance to county clerks of a sum equal to three per centum of their receipts for hunters' licenses, in addition to their actual disbursements, the sum of ten thousand dollars (\$10,000), or so much thereof as may be necessary."

On pages 41 and 42: "For establishing additional nurseries for the propagation of forest trees to be furnished to the citizens of the state at cost and planted under direction and regulation of the forest, fish and game commission, and to be used in reforesting denuded and burned land in the forest preserve, ten thousand dollars (\$10,000), or so much thereof as may be necessary."

On page 43: "and for rebate due towns on account of bills paid by them for the suppression of forest fires, twenty thousand dollars, (\$20,000), or so much thereof as may be necessary."

On page 43: "For the commissioner for investigations in jurisdictions, state and national, other than the state of New York, of the method of practicing forestry, and of the laws and rules governing the cutting and removal of timber from private and public land, together with the statutes governing the storage of water and the conservation of water supply within the limits of forest reserves, and the laws and rules relating to the protection of said forest reserves from fire, the sum of five thousand dollars (\$5,000), or so much thereof as may be necessary."

On page 44: "For the additional salary of the commissioner from January first, nineteen hundred and nine, to September thirtieth, nineteen hundred and ten, payable monthly, the sum of one thousand seven hundred and fifty dollars (\$1,750), or so much thereof as may be necessary."

On page 45: "For the salary of one additional stenographer, seven hundred twenty dollars (\$720)."

On page 45: "For the purchase of that portion of Lotus island in the Saint Lawrence river not now owned by the state, five thousand dollars (\$5,000), or so much thereof as may be necessary, the same when purchased to become a part of the Saint Lawrence reservation."

On page 47: "For examination and investigation of the sanitary condition of oyster beds, the fitness of oysters and other shell fish for food, and the sanitary condition of shell and other fish, as required by sections two hundred thirteen and two hundred fourteen of chapter twenty-four, laws nineteen hundred nine, being the forest, fish and game law; with the forest, fish and game commissioner, five thousand dollars (\$5,000), or so much thereof as may be necessary."

On page 48: "For clerk hire, printing, filing cases, purchase of seals, badges and certificates of registration, express and the other necessary expenses for the enforcement of article eleven of the act relating to highways in relation to motor vehicles, forty-eight thousand dollars (\$48,000), and in addition thereto the further sum of eighteen thousand dollars heretofore appropriated by chapter four hundred sixty-five of the laws of nineteen hundred eight, for the supervision of the

expenditure of moneys for the repair and maintenance of public highways in towns under the money system pursuant to sections fifty-five-c and fifty-five-d of the old highway law, is hereby reappropriated for the above specified purpose, or so much thereof as may be necessary."

On page 58: "For the Saint Lawrence State Hospital, to purchase the William J. Morrison farm, consisting of about two hundred and eight acres, at fifty dollars per acre, in accordance with an option contained in the lease of said farm now held by said hospital, ten thousand five hundred dollars (\$10,500), or so much thereof as may be necessary."

On pages 58 and 59: "For the Manhattan State Hospital, for deficiency in the appropriation made by chapter four hundred seventy, laws of nineteen hundred eight, for additional accommodations for medical staff, six thousand dollars (\$6,000)."

On pages 61 and 62: "For the purchase of land forty-six feet by seventy-one and eight-tenths feet, situated north of and adjoining lands now owned by the state and occupied as an armory by the thirty-fourth separate company of the national guard at Geneva, four thousand six hundred dollars (\$4,600), or so much thereof as may be necessary, to be paid by the treasurer on the warrant of the comptroller on the approval, by the attorney-general, of the title and conveyance."

On page 62: "For Williams and Manogue for labor and materials furnished by them in the construction of the state armory at Whitehall, two thousand six hundred six dollars and twenty-nine cents (\$2,606.29), to be paid by the comptroller on the written requisition of the armory commission, and upon presentation to the comptroller by said firm an affidavit stating the amount of their contract and the amount or amounts which have been paid to them by Andrew Douglas or his referee in bankruptcy. There shall also be filed with the comptroller at the time payment is made, a release of any further claim or claims for labor and materials furnished by said firm in the construction of said armory."

On page 62: "For clerical services and expenses in connection with disbursement of refund by United States to vol-

unteers Spanish war, two thousand five hundred dollars (\$2,500), or so much thereof as may be necessary."

On page 66: "For the Argus Company for printing under the direction of Charles R. Skinner, former superintendent of public instruction, one hundred ninety-nine dollars (\$199)."

On page 66: "For the salary of the chairman of the state commission of prisons, four thousand dollars (\$4,000), or so much thereof as may be necessary."

On page 66: "For one stenographer from June first to October first, nineteen hundred nine, three hundred thirty-four dollars (\$334)."

On page 67: "For road roller, repairing stone crusher and purchasing other necessary road building equipment, three thousand dollars (\$3,000), or so much thereof as may be necessary."

On page 68: "For stationery, office expenses, five hundred dollars (\$500), or so much thereof as may be necessary."

On page 68: "For the salary of the president, four thousand dollars (\$4,000)."

On page 69: "For the services of the law member of the state board of parole, in addition to the salary provided in the appropriation bill, at a rate not to exceed ten dollars (\$10) per day additional for the time actually employed, the sum of one thousand five hundred dollars (\$1,500)."

On page 72: "For the repairs and maintenance of the two state dams and the locks therein, situated on state land on the Saranac river, between Middle Saranac lake and Oseetah lake and making the waters thereof navigable and safe, five thousand five hundred dollars (\$5,500), or so much thereof as may be necessary."

On pages 72 and 73: "For removing stumps and dead timber and improving and rendering safe the navigation of Big Tupper lake and Raquette pond and the channel between, ten thousand dollars (\$10,000), or so much thereof as may be necessary."

On page 73: "For rebuilding the dam across the Black river at Carthage, the sum of fifteen thousand dollars (\$15,000), or so much thereof as may be necessary; but no

part of said appropriation shall be available for any purpose, excepting for plans, specifications and necessary advertising, until a sum in addition to the fifteen thousand dollars, sufficient to complete said dam in accordance with the plans and specifications, shall be placed to the credit of the superintendent of public works, payable to his order, in a responsible national bank to be approved by the superintendent of public works; and no contract for the construction of said dam shall be entered into until the property owners adjacent to the dam shall give a release to the state, for and on account of any and all damage that may result by reason of the construction and maintenance of said dam."

On page 73: "For the purpose of strengthening, dredging and improving Butternut creek in the town of DeWitt, county of Onondaga, New York, from the intersection of the feeder from the Jamesville reservoir in Onondaga county to the aqueduct, and thereby providing sufficient outlet for the surplus water from the Jamesville reservoir, the sum of fourteen thousand dollars (\$14,000), or so much thereof as may be necessary."

On pages 73 and 74: "For cleaning out the state ditch in Livingston county, in the towns of Livonia, Lima and Avon and the ditch leading into the main ditch, known as the East ditch, seven thousand dollars (\$7,000), or so much thereof as may be necessary."

On page 74: "For constructing a breakwater at Cranberry lake, in the county of Saint Lawrence, five thousand dollars (\$5,000), or so much thereof as may be necessary."

On page 74: "For completing the dyke along the north bank of the Chemung river from near Columbia street, in the city of Elmira, to the western limits of said city and dyking the banks of Hoffman creek in said city from the mouth thereof to a point near Water street, and repairing the dykes on both sides of the Chemung river in said city heretofore built by the state where defective construction shall have rendered repairs necessary, ten thousand dollars (\$10,000), or so much thereof as may be necessary. Such sum to be in addition to the five thousand dollars appropriated by chapter four hundred sixty-six, laws of nineteen hundred eight."

On page 78: "For the salary of one additional special agent, eighteen hundred dollars (\$1,800)."

On page 79: "For expenses of delegates to international tax conference and printing of the proceedings thereof, five hundred dollars (\$500), or so much thereof as may be necessary. The printed report of such conference to be distributed under the direction of the state board of tax commissioners."

On page 91: "For Jastrow Alexander for disbursements as state inspector of gas meters, three hundred forty-two dollars seventy-two cents (\$342.72), or so much thereof as may be necessary."

On page 96: "For Doctor William P. Sprattling for deficiency in compensation and for disbursements as superintendent of Craig Colony for Epileptics at Sonyea between November fourteenth, eighteen hundred ninety-four and April first, eighteen hundred ninety-five, to be paid upon filing a receipt in full for all claims against the state for services and disbursements, twenty-five hundred dollars (\$2,500)."

On pages 96 and 97: "for rock excavation, concrete, railings and general repairs, including new stairs and bridges, five thousand dollars (\$5,000);"

On page 97: "for designs and plans, five hundred dollars (\$500);"

On page 97: "For the construction of the superintendent's house, seven thousand dollars (\$7,000);"

On page 97: "and for the construction of a bathing pavilion, ten thousand dollars (\$10,000)."

On page 97: "For Hiram E. Smith, for feed and care of forty-two head of cattle, from October twenty-fourth, nineteen hundred and four, to July tenth, nineteen hundred five, at twenty-five cents per head per day, tested for tuberculosis by order of the commissioner of agriculture and held for the time above stated, two thousand six hundred twenty-five dollars (\$2,625), or so much thereof as may be necessary."

On page 98: "For the trustees of the Mount Tabor Manual Training and Industrial School for Colored Youth at number fifty-seven West One Hundred Thirty-fourth street, New York city, for maintenance, improvements, repairs, books,

equipment and incidental expenses, one thousand dollars (\$1,000)."

On page 98: "For the treasurer of the American Seaman's Friend Society the sum of ten thousand dollars (\$10,000), as a loan, pursuant to the conditions of the original loan made by chapter one hundred seventy-three of the laws of eighteen hundred forty; said ten thousand dollars (\$10,000) having been paid into the treasury in the condemnation proceedings instituted by the city for acquiring the site for the approaches to the Williamsburg bridge."

On page 99: "For payment to contractor, for work performed in connection with foundations and repairs to the Guild house of All Saints' cathedral, adjoining the site of the state education building, Albany, New York, made necessary by the character of the soil, and for such investigations and expert assistance as may be necessary to determine the value of the work performed, the sum of fifty-eight thousand dollars (re. \$58,000), or so much thereof as may be necessary, payable on certificate of the state architect, upon the execution of a proper release postponing the final determination of the question whether said work constitutes an extra under the terms of said contract until final settlement of same, said release to be approved as to form by the attorney-general. The same to be paid out of the appropriation heretofore made by chapter five hundred and eighty-seven of the laws of nineteen hundred seven for construction of said education building."

On page 100: "For the expenses of the governor, his staff and the committee of the legislature to be appointed by the president of the senate and the speaker of the assembly to attend such exposition on New York day, fifteen thousand dollars (\$15,000), or so much thereof as may be necessary, to be paid on the certificate of the temporary president of the senate and the speaker of the assembly."

On page 100: "To supply the deficiency in the appropriation provided by chapter six hundred and fifty-four, laws of eighteen hundred and ninety-nine, to be paid upon the filing of the proper vouchers in accordance with the provisions of

such chapter to Rollin G. Wilkins, four hundred and forty-six dollars (\$446), or so much thereof as may be necessary."

These items are objected to upon the ground that they are severally either unnecessary or unconstitutional, or in view of the demands upon the State, are inexpedient at this time, or do not represent obligations of the State which should be recognized and discharged in this manner.

Pursuant to section 9 of article IV of the Constitution I object to each of the above mentioned items contained in said bill (Assembly bill No. 1906, Senate reprint No. 1577) while approving of the other portion of the bill. And I hereby append to the bill at the time of signing it this statement of the items to which I object.

(Signed) CHARLES E. HUGHES

The Annual Appropriation Bill—Items Vetoed

STATE OF NEW YORK—EXECUTIVE CHAMBER

Albany, May 22, 1909

MEMORANDUM filed with Assembly bill No. 2415, entitled

"An act making appropriations for the support of government."

STATEMENT of items of appropriation of money, contained in said bill, which are severally objected to, to wit:

On page 16, under the heading Court of Claims: "For the expenses and disbursements of each judge, two thousand five hundred dollars, payable monthly, seven thousand five hundred dollars (\$7,500)."

On pages 16 and 17, under the heading of Legislature: "For the clerks of the senate and assembly, for clergymen officiating as chaplains, to be paid at the rate of five dollars for each day of attendance; for printing, stationery, supplies, file boards and record-books; for preparation, proof-reading and comparison of journals, documents and financial reports; for clerical and stenographic services; for preparation and

revising legislative manual and clerk's manual; for books and blanks; for care of bills, documents and library; for law books and binding of books and records; for furniture, alteration and repairs of legislative rooms; for expense of receiving reports and printed documents and storing, addressing and forwarding the same; for engrossing resolutions and for other legislative and contingent expenses, to be paid upon the certificate of the clerk of the senate or assembly, respectively, the sum of twenty-five thousand dollars (\$25,000), or so much thereof as may be necessary."

On page 21, under the heading Office of the Comptroller: "For the Bank of Manhattan Company, for keeping transfer office and for stationery for same, one thousand five hundred dollars (\$1,500), or so much thereof as may be necessary."

On page 38, under the heading of Department of Agriculture — State Fair Commission: "for printing and advertising, ten thousand dollars (\$10,000);"

"for maintenance, improvement of grounds and general repairs, twenty thousand dollars (\$20,000); for the payment of premiums at the state fair to be held in nineteen hundred and ten, forty thousand dollars (\$40,000)."

The foregoing items are severally objected to upon the ground that they are either unnecessary or inexpedient at this time.

On page 32, under the heading of Department of Agriculture: "one assistant commissioner in the second district, who shall have been a resident of that district at least nine years, three thousand dollars (\$3,000)."

This item, with its unnecessary restriction, cannot be approved.

Pursuant to section 9 of Article IV of the Constitution I object to each of the above mentioned items contained in said bill (Assembly bill No. 2415) while approving of the other portion of the bill. And I hereby append to the bill at the time of signing it this statement of the items to which I object.

(Signed) CHARLES E. HUGHES

**Providing for a Survey and Plans for the Acquisition
of Harbor Terminals by the State in the Port of
New York**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 22, 1909

MEMORANDUM filed with Assembly bill No. 469, entitled

"An act to provide a survey and plans for the acquisition of harbor terminals by the state in the port of New York, by the construction of an artificial waterway between Flushing and Jamaica bays, and providing an appropriation therefor."

NOT APPROVED.

The object sought to be attained by this bill can receive proper consideration in the course of the inquiry authorized by Senate bill No. 931 with regard to providing suitable terminal facilities for the canals of this State with the view of ultimately improving and fostering the State's commerce. The latter bill provides for an investigation by the State Engineer, the Superintendent of Public Works, the Chairman of the Advisory Board of Consulting Engineers and the Special Examiner of Canal Lands. I have approved the said Senate bill because it is wider in scope than the bill relating solely to the connection between Flushing and Jamaica bays and permits the investigation of all questions relating to proper terminal facilities. It does not appear that there is any need of both bills.

(Signed)

CHARLES E. HUGHES

Providing for Granting Pensions to Soldiers, Sailors and Marines of the Civil War

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 18, 1909

MEMORANDUM filed with Senate bill No. 1326, entitled

“An act to provide for granting pensions to soldiers, sailors and marines, who served in the army or navy of the United States, from the state of New York, in the civil war, making provisions for issuing bonds to the extent of two million dollars for the payment of such pensions, and providing for the submission of this act to a vote of the people at the general election to be held in nineteen hundred and nine.”

NOT APPROVED.

The Legislature passed two bills, each providing for the creation of a State debt in excess of one million dollars. The one is for the improvement of the Cayuga and Seneca canals, the other is the present bill for the payment of pensions to veterans of the Civil War. Neither can become a law without being submitted to the people and approved of by them at the general election to be held this fall. But under the Constitution only one such bill can be submitted at the same election. Hence both these bills cannot become laws.

The bill first passed was that providing for the canal improvement. Having expressed its judgment that the canal bill should receive the sanction of the people, and having by its passage provided for the single submission contemplated by the Constitution, the Legislature could not consistently pass any other bill requiring a similar submission. The Legislature chose, however, to pass the conflicting pension bill and thus to place upon the Executive the responsibility of selection.

The pension bill provides,

(1) For a State Bureau of Pensions, with a commissioner, deputy commissioner and necessary clerks.

(2) For the payment of pensions, under specified conditions, to veterans of the Civil War honorably discharged, who served ninety days or more and were enlisted and enrolled in this State as volunteer soldiers in any military body organized under the authority of this State, or whose enlistment or enrollment was credited upon the State's quota in the military, naval or marine service of the United States.

The amount of the pension is six dollars a month where the pensioner is sixty-two years of age or over.

(3) For the issue of State bonds for not more than \$2,000,000, payable in five years with interest not exceeding four per cent.

(4) For the raising by direct tax annually, of whatever amount may be needed to pay the pensions granted and the expense of maintaining the pension bureau, after the two million dollars raised by the bond issue have been exhausted.

As to these main features of the bill it may be noted:

The pension is to be a service pension. It is not based upon disability or dependency. It makes slight attempt at equity of distribution. Those who are inmates of soldiers' homes or of institutions supported in whole or in part by the public, are excepted from its benefits. Otherwise the pension is payable as well to the prosperous as to the needy, to the unfortunate and to the well-to-do alike.

It makes no distinction of service, and those who bore the heavier burdens of long campaigns are reduced to an equality with those who served for only ninety days. It knows no gradation but provides a uniform payment to all who come within its broad provisions.

Pensioners must have resided in this State three consecutive years before application for pension, and at least one year before each pension-paying period. One who went to the war from his home in New York as a member of a New York regiment, but since the war has made his home in Pennsylvania and remains there, would take no pension here. Nor would he receive one under a Pennsylvania statute if the policy of this bill were followed. All who have permanently removed from the State of their enlistment would be debarred under this policy from any State pension.

The bonds to be issued, of \$2,000,000, would provide no more than would probably be required for the first year. If there are 30,000 survivors in this State who would be entitled to such a pension, the payment to them in one year would amount to \$2,160,000.

Aside from the matters suggested by these features of the bill, a serious question arises with regard to the constitutionality of the statute if enacted.

Section 4 of Article VII of the Constitution provides the manner in which such a State debt as is contemplated by this bill may be contracted. It requires that the law authorizing it "shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay," the interest on the debt, and also to discharge the principal within a given period. The present bill uses the language of the Constitution and states that "there is hereby imposed * * * an annual tax to pay and sufficient to pay the interest on such bonds as it falls due, and also to pay and discharge the principal of such bonds within five years from the date of issue thereof." But while the bill says that it imposes a tax, it may be doubted whether it does in fact impose it. It does not fix any rate of annual tax. It does not fix the amount of annual tax. These matters are wholly left to succeeding Legislatures.

Adjudications relied upon both in support of and in opposition to the bill are not directly in point. Nor has the practice of the Legislature been uniform. Mr. Lincoln in his Constitutional History says upon this point (Vol. IV; p. 651), "This provision has not received a uniform construction by the Legislatures which have submitted bonding acts. The earlier Legislatures did not fix the rate of tax in the act, but later Legislatures have proceeded on the supposition that the Constitution required a computation of the annual tax rate necessary to provide for the payment of the debt and the statement of this rate in the law." The Canal act of 1903 (Chapter 147) fixes a specific rate of annual tax of "twelve one-thousandths of a mill upon each dollar" of assessed valuation for every one million dollars or part thereof in par value of bonds issued and outstanding in any fiscal year.

So also, in marked contrast to the present bill, the Cayuga and Seneca canal bill passed at this session of the Legislature, fixes a specific annual tax rate of "four one-thousandths of a mill on each dollar" of assessed valuation for each million dollars of bonds, or fraction thereof, in par value issued and outstanding during each fiscal year.

It would seem that the purpose of the constitutional provision was not simply to require a general statement in the statute, that an amount necessary to pay the interest and principal of the debt should be raised by taxation, but a specific provision for the tax, with such definiteness as to show that the debt, interest and principal, is in fact provided for, and to apprise the people in appropriate detail of the annual burden which they would assume in approving the proposed law. The intent of the Constitution may be gathered from the subsequent provision of the same section with regard to the authority of the Legislature at any time to forbid the contracting of any further debt under a law which has been submitted and approved. For in such case it is provided that "the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable and be annually collected until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability." This apparently contemplates that the law creating the debt should make provision for a tax with suitable definiteness so that there shall be a tax which may appropriately be said to "remain in force" and "be annually collected."

If this bill does not comply with the Constitution, its approval by the people would not aid it. For the people in approving it would not be amending the Constitution, but would be acting under its provisions, and their approval like that of the Executive, to have effect, must relate to a law which complies with the constitutional requirements. Were there no other questions involved, I could not approve this bill.

But a further question is presented, — a fundamental question of State policy. Is it sound policy for the State, independently and upon its own behalf, to assume an obligation to

pay pensions based simply upon service in the armies of the United States? I think not.

This is not a matter of patriotic sentiment. It is a question of the proper recognition of the division of State and National functions. Every lover of his country cherishes the memory of those who unselfishly gave themselves to the hardships of war and offered their lives that the Union might be preserved. Our youth must ever be inspired by the example of ardor of that host of young men who sacrificed the varied opportunities of early manhood and, thoughtless of personal loss, responded to the call of the Nation. Mankind has never witnessed a finer exhibition of patriotic devotion, and no one could desire to detract from the just obligation imposed by that service.

But we should not ignore the true incidence of that obligation. In our State administration we deal with State affairs, and National obligations must be discharged by the Nation. This implies no shirking on the part of citizens of the State for they are citizens also of the Nation and in that capacity bear their share of National outlays.

That the payment of military pensions for service in the United States army is distinctively a National concern cannot be doubted. A centralized pension system was one of the early institutions under the Federal government, and the latter soon assumed the payment of pensions granted by the States to those who had served in the Revolutionary War. The policy thus inaugurated and so long maintained should not be departed from. It is only by this policy that we can secure an equitable distribution of pensions and make such provision for their payment as will be fair to all concerned.

The citizens of Ohio are just as much under obligation to the soldiers who enlisted in New York for the defense of the Union as are the citizens of New York itself. Those who enlisted from New York went to the war as much for the defense of the people of Pennsylvania and of other States as for the defense of their fellow citizens of New York. They did not go for the defense of any State as such, but that the Union might be maintained.

State pensions for military service are indefensible in prin-

ciple and will breed injustice in practice. The provisions of the present bill show this clearly. The volunteer who enlisted from New York and was credited to this State, though he may now live in Illinois, is as much entitled to a pension for his service as though he had remained here. It is only the Federal government that can grant pensions upon a just and equal basis, for it represents all the people and can discharge the common obligation to all who served in a common cause.

The present bill relates only to the veterans of the Civil War. But it must also be regarded as an important precedent, and if enacted into law may have far-reaching consequences. If a State pension is to be granted, upon the basis of ninety days' service alone, to those who served in the Civil War, how will it be denied to those who served in the Spanish-American War? And what will be the consequences of the establishment of such a system? If the States generally adopt the policy of granting military pensions, independently, for service in the United States army, it will be a most natural result that the burden of future pensions will largely be left to fall upon the States. We may trust that hereafter we shall not be vexed by war, but it is important that, in case of war, the sense of our community of interest and of the resulting National obligation should not be obscured by any policy adopted by the States. If the Atlantic coast should be the scene of warfare and troops should be mobilized in the Atlantic and Central States, none the less should the people of the Pacific coast recognize their partnership in all obligations that might be entailed. Similarly, if there should be a conflict upon the Pacific coast, the people of New England and New York should through National action bear their part of the resulting burden. If pensions in such cases become justly payable, they should be paid by the Federal government without diminution by reason of State pension systems, and without demand that through such means East or West or any State or States should take care of its own.

The State of New York maintains a Soldiers and Sailors' home for veterans of the Civil War who are in need, and a home for aged, dependent veterans and their wives. It is a different matter to provide for the payment of a State pen-

sion, as now proposed, based solely upon military service to the Nation, and the unwisdom of such a policy we cannot afford to ignore.

We honor the veterans of the Civil War for their struggle to preserve the Union; it is our duty to conduct the government, so maintained, in accordance with the principles of its institutions.

It may be said that this matter should be submitted to the judgment of the people. But it is the intent of the Constitution that no bill of this sort shall be submitted to the people unless it is recommended by the Legislature and the Governor, or by the Legislature over the Governor's veto, for their favorable consideration. For the reasons stated I cannot recommend the enactment of this proposed law.

The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

**Making an Appropriation for the Expenses of Delegates
to the National Guard Convention at Los Angeles,
California**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 22, 1909

MEMORANDUM filed with Assembly bill No. 1375 (Senate Reprint No. 1483), entitled

"An act making an appropriation for the expenses of delegates to the national guard convention at Los Angeles, California."

NOT APPROVED.

Provision can be made for a suitable detail to represent the interests of the State at the convention, and this bill does not seem to be required.

(Signed) CHARLES E. HUGHES

**Making an Appropriation for the Construction of a Dam
and the Installation of a Water System at Letch-
worth Village**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 22, 1909

MEMORANDUM filed with Assembly bill No. 1383 (Senate Reprint No. 1579), entitled

“An act making appropriations for the Eastern New York State Custodial Asylum, established by chapter three hundred and thirty-one of the laws of nineteen hundred and seven, to be known hereafter as ‘Letchworth Village.’”

Statement of item of appropriation of money, contained in said bill, which is objected to, to wit:

On page 2: “For the construction of a dam to provide for water storage and to apply to the installation of the main water system of the village, fifty thousand dollars (\$50,000).”

This item is objected to as unnecessary and inexpedient at this time.

(Signed) CHARLES E. HUGHES

**Making Appropriations for the Improvement of the
Delaware River and Powell Creek**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 22, 1909

MEMORANDUM filed with Assembly bill No. 2060, entitled

“An act to complete the construction of such dike or dikes as are necessary for the protection of property adjacent to the Delaware river in the city of Port Jervis, by the completion of the work begun under chapter seven hundred and sixteen of the laws of nineteen hundred and four, and making an appropriation therefor.” ; and

Assembly bill No. 2096, entitled

"An act to provide for the improvement of the Delaware river at the village of Deposit, Delaware county, and making an appropriation therefor." ; and

Assembly bill No. 727, entitled

"An act to provide for the completion of a dyke or dykes for the protection of property adjacent to the Delaware river in the town of Highland, in the county of Sullivan, and making an appropriation therefor." ; and

Assembly bill No. 1351, entitled

"An act to provide for dredging Powell creek in the county of Nassau, for widening and deepening the channel thereof, and making an appropriation therefor."

NOT APPROVED.

The extent of the demands upon the State treasury compels the conclusion that these expenditures, and others of the same class which are found in the Supply bill, cannot be allowed. At the same time, the number of requests for appropriations for river improvement in various parts of the State and for protection from loss by floods, calls attention to the necessity of providing a proper system by which the needs of these communities can be met in a just way. Under the present system legislative acts, or items in appropriation bills, are sought which place the entire cost of the improvements upon the State. But it is apparent that in view of the limits of the State's income and the pressure upon it, a proper distribution of the expense of such improvements should be made so that the cities, towns and counties directly benefited may bear what may be found to be their proper share.

The statute relating to river improvement, under the direction of the State Water Supply Commission, has been amended this year to make its plan more workable, and if anything more is needed to make it entirely adequate to the just necessities of further improvements in various parts of the State, it can readily be supplied by further amendment. We should thus have a method by which every exigency may

be promptly considered, its requirements met, and the cost fairly apportioned. I hope that this subject will have early attention and that the whole matter will be put upon a proper basis.

(Signed) CHARLES E. HUGHES

Amending the Liquor Tax Law — The "New Theatre"

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 24, 1909

MEMORANDUM filed with Senate bill No. 911, entitled

"An act to amend the Liquor Tax law, in relation to consents that may be granted for the traffic in liquor within two hundred feet of a church or schoolhouse."

NOT APPROVED.

This amendment to the Liquor Tax law allows for traffic in liquors within 200 feet of a building occupied as a private school with the consent of the person or corporation using the building for that purpose.

The amendment has been sought in the interest of the "New Theatre" in the City of New York, an enterprise in itself entirely commendable and worthy of support; but it is recognized that a special exception should not be granted for this case, and hence the bill is general in its application. The bill applies generally to all places throughout the State where traffic in liquors to be drunk upon the premises may be carried on,— as well to the ordinary saloon, or the low grade hotel, as to any other place.

The amendment cannot be justified. It ignores the fact that the policy of the law is for the protection of the children, and not for the advantage of proprietors or managers of schools. That policy is expressed in the provision for a free area about our schoolhouses. If proprietors of private schools may be permitted to allow this area to be encroached

upon, it is difficult to see why the public authorities should not have the same privilege with regard to public schools.

In our large cities the pressure upon our public school system is so great that a large number of children must inevitably be educated in private schools, and under the conditions which actually exist suitable safeguards should be provided in both cases. The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

Providing for a New Board of Pharmacy

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 24, 1909

MEMORANDUM filed with Assembly bill No. 2285 (Senate Reprint No. 1515), entitled

“An act to amend the Public Health law relative to the practice of pharmacy.”

NOT APPROVED.

In my annual message to the Legislature at the beginning of the last session I recommended the revision of the laws relating to the State Board of Pharmacy and proper amendments to secure such additional restrictions with regard to the sale of drugs as might be advisable. It was pointed out that our present system of supervision was faulty, and that while it was not intended to criticise the present members of the Board, it was not compatible with a proper theory of State administration that there should be a State Board exercising important State powers which was not properly accountable to State authority, and over the selection of members of which the State had no proper control.

The present bill provides for a new Board of Pharmacy to consist of nine examiners to be designated by the Regents of the State University. While, so far as examinations and licenses are concerned, it might be proper to have the board constituted in this way, the advisability of investing such a

board of examiners with the broad powers provided for in the bill is open to serious question.

It is provided, however, that the first examiners are to be designated from the members of the present Board, and that in appointing their successors the appointments by the Regents "shall be made from the names of six candidates to be submitted to the Regents" by the Pharmaceutical Association. Thus the powers given by the bill are to be exercised by those designated in this manner by a private organization. I do not believe in this policy. Even so far as examinations and licenses are concerned, it is open to one of the objections upon which I disapproved the optometry bill of two years ago, which provided that the Board of Examiners in Optometry to be appointed by the Board of Regents should be selected from those nominated by the Optical Society.

In the light of this objection, it is unnecessary to consider the other grounds which have been urged by those who have opposed the bill. The bill is disapproved.

(Signed) CHARLES E. HUGHES

Relative to the Incorporation and Government of Holy Orthodox Greek Catholic Apostolic Churches

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 25, 1909

MEMORANDUM filed with Assembly bill No. 1391 (Senate Reprint No. 1361), entitled

"An act to amend the religious corporations law, relative to the incorporation and government of Holy Orthodox Greek Catholic Apostolic churches."

NOT APPROVED.

It is apparent that provision should be made for the incorporation of Orthodox Greek Catholic Apostolic churches, as the present law is entirely inadequate and has incongruous features. But such provision for incorporation should take

proper account of, and be satisfactory to, the different divisions of the Orthodox Greek church. Vigorous protest has been made against this bill because it has ignored these divisions, and it would seem that only uncertainty and confusion would result from its enactment into law. It is better that the matter should rest until the next session of the Legislature when it will not be difficult to frame a law which will provide in a satisfactory way for all concerned.

(Signed) CHARLES E. HUGHES

Amending the State Finance Law, in Relation to Securities Given and Deposit of Money in Banking Institutions

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 25, 1909

MEMORANDUM filed with Assembly bill No. 1806, entitled

“An act to amend the State Finance law, in relation to securities given and deposit of money in banking institutions.”

NOT APPROVED.

The State Finance law provides that State moneys deposited in banks by the State Treasurer shall be secured either by a surety bond to the State, or by a deposit with the Comptroller of State bonds. The amendment proposed by this bill permits such deposits of State moneys to be secured by municipal or corporate bonds which are legal investments for savings banks in the State of New York having in the aggregate a market value at least ten per cent in excess of the amount of the deposit secured.

It is entirely proper that the State should favor its own bonds in providing security for the deposit of its own moneys. I am advised by the State Comptroller that the preference given by the statute “has materially assisted in the disposition

of bonds" and that this amendment "would in the judgment of this department seriously interfere with the State's financial operations in connection with the improvement of canals and highways." In view of the large undertakings now in progress and of the amount which must be provided from bond sales, it would be unfortunate if anything were done to prejudice the State's obligations or to withdraw any advantage they may now possess. The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

Amending the Rapid Transit Act, in Regard to Extensions of Such Railways

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 26, 1909

MEMORANDUM filed with Senate bill No. 1507, entitled

"An act to amend chapter four of the laws of eighteen hundred and ninety-one, entitled 'An act to provide rapid transit railways in cities of over one million inhabitants,' in regard to extensions of such railways."

NOT APPROVED.

This bill provides for the amendment of section 34 of the Rapid Transit act and conflicts with Assembly bill No. 2310, known as the Travis-Robinson bill which amends the same section. The Travis-Robinson bill is a comprehensive measure designed to meet in a just way, and with proper safeguards of the public interest, the necessities of the city with regard to rapid transit development. Nothing should be done to introduce uncertainty or confusion. If the present bill were signed first, the subsequent signing of the Travis-Robinson bill would supersede it. If the Travis-Robinson bill were signed first, the signing of this bill would override important provisions of the former. From any point of view this bill is inadvisable and cannot be approved.

(Signed) CHARLES E. HUGHES

In Relation to Motor Vehicles

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 26, 1909

MEMORANDUM filed with Assembly bill No. 2413, entitled

"An act to amend the Highway law, by repealing article eleven thereof and inserting a new article eleven, in relation to motor vehicles."

NOT APPROVED.

The study of this measure has convinced me that it would be unwise to enact it into law. It is true that it provides for an increase of the State's revenues, and in view of the amounts we are expending in the improvement of our highways and of the difficulties of maintenance under new uses, the revenue provisions of the bill are important.

But the subject of paramount consideration at this time is protection to life and limb. We are passing through a period of adjustment when the natural hostility of many to new highway conditions is increased by abuse of privilege, and others are chafing under what they regard as vexatious restraints and unjust exactions. Nothing can be more certain than that the use of motor vehicles will largely increase, that the number of accidents will diminish, and that usage and common sense will largely do away with present evils. During this transition period, however, there should be the utmost care in legislation so that matters should not be made worse instead of better. There are many good provisions in this bill and it has been strongly urged that it should have a trial. But it seems to me better to wait and to secure an improved bill, than to enact a measure as defective as this one appears to be.

The present law provides specific speed limitations of ten miles an hour where the territory is closely built up, fifteen miles an hour elsewhere in a city or village, and twenty miles an hour elsewhere outside of a city or village. In addition, the present law also provides for a reasonable rate of speed in all cases,—that is, that no one shall operate a motor vehicle

on a public highway "at a rate of speed greater than is reasonable and proper, having regard to the traffic and use of the highway, or so as to endanger the life or limb of any person, or the safety of any property."

This bill abolishes the specific speed limitations, and with certain changes in phraseology with regard to the duty of care, proposes as the sole requirement as to speed, the following:

"§ 287. Speed permitted.—Every person operating a motor vehicle on the public highways of this state shall drive the same in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person; provided that a rate of speed in excess of thirty miles an hour shall be presumptive evidence of reckless driving."

There is much force in the suggestion that requirements of due care cannot be accurately reflected in arbitrary speed limits. But it must also be remembered that in this field as in others a large number of injuries must inevitably be due to mere accident where negligence cannot be satisfactorily proved. It is public policy in dealing with these matters not simply to see that negligent persons are held to account, but also by reasonable regulation, to diminish the risks of preventable injury. This is sought to be accomplished by speed restrictions. And it is still an open question whether at this stage in our progress toward the wider use of these vehicles of pleasure and convenience, it is safe to rely simply upon a requirement of care and prudence with all the difficulties that attend actual proof of want of care.

It is certain, however, that whatever may be said as to the wisdom of such a rule with regard to the open country, or in sparsely settled towns, we should not deprive our large cities of the right to make reasonable traffic regulations to insure the safety and convenience of the public.

About one-half of the population of this State is within the city of New York, and the Mayor of that city has sent me a vigorous protest against the provisions of this bill. And whatever else may be said of it, it should not become a law if it takes away from the authorities of New York city that reason-

able traffic control without which conditions in the metropolis would be intolerable.

The present Motor Vehicle law took effect on May 3, 1904. It is true that it prohibited, with certain exceptions, the making of local ordinances. But the next year, 1905, the Legislature amended the Greater New York Charter so as to give the police department the right to "regulate, direct, control, restrict and direct the movement of all teams, horses, carts, wagons, automobiles and all other vehicles in streets, bridges, squares, parks and public places for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health," and to that end authorized the police commissioner to make "such rules and regulations for the conduct of vehicular traffic in the use of the public streets, squares and avenues as he may deem necessary." Any prior provisions of law inconsistent with this authority, were repealed.

The present bill takes away from the local authorities the power "to pass, enforce or maintain any ordinance, rule or regulation * * * excluding any such owner or chauffeur from the free use of such public highways or in any other way respecting motor vehicles or their speed upon or use of the public highways." It expressly provides that any ordinance, rule or regulation "now in force or hereafter enacted" which is "in any wise inconsistent" with the provisions of the act, shall have no effect. The only exceptions are the powers. (1) to regulate vehicles offered to the public for hire, (2) to regulate processions, assemblages or parades in the streets or public places, (3) to set aside a specified public highway for speed contests or races, and (4) to exclude motor vehicles from cemeteries.

In short it would practically abolish municipal traffic regulations as to private motor cars. Any one acquainted with conditions in New York city knows how much of the public convenience and safety is due to the maintenance of proper traffic regulations and must recognize the impropriety of making such regulations impossible in the interest of the free passage of motor cars.

It would also appear that under this bill there would be no

power vested in the local authorities to exclude motor trucks or motor vehicles used for commercial purposes from the parks of the city which are included in the "public highways" as defined in the bill. It would deprive the local authorities of any power they now possess for this purpose.

These defects are grave enough to compel the disapproval of this bill.

But, it may be added, with regard to the general application of the bill, that the abolition of specific speed limitations and the substitution merely of the rule of due care should carry with it stringent penalties in case of negligent driving. It would seem that the penalties for actually proved negligence should be heavier than those imposed for merely exceeding an arbitrary speed limit.

The penalties provided for in this bill, with respect to violations of speed requirements, are less stringent than those of the present law.

A comparison shows the following results:

For a first offense: Under the present law, a fine not exceeding \$100; under the proposed law, a fine not exceeding \$50.

For a second offense: Under the present law, a fine not less than \$50 nor more than \$100, or imprisonment not exceeding thirty days, or both; under the proposed law, a fine not exceeding \$50, or imprisonment for not exceeding thirty days, or both.

For a third or subsequent offense: Under the present law, a fine of not less than \$100 nor more than \$250, and imprisonment not exceeding thirty days; under the proposed law, a fine of not exceeding \$50 and imprisonment not exceeding thirty days.

It is true that the provisions of the proposed law for maintaining records and distributing information of prior convictions are very useful. But these advantages are more than offset by the inadequacy of other provisions.

The deterrent feature, which is relied upon to secure obedience to the law, is the requirement of an actual imprisonment upon conviction for a third offense. And the importance

of maintaining records of prior convictions is to pave the way for this punishment of the confirmed violator of the law. But the present bill limits the amount of bail which may be taken, to \$100. It provides that where the magistrate is without jurisdiction to try the offense, and the defendant "charged with the violation of any provision" of the act is held to answer, the magistrate must admit the defendant to bail upon his giving a surety company bond, or an undertaking, in the sum of \$100, or upon his deposit of a like amount in cash. If records were maintained so that imprisonment were the inevitable consequence of conviction for a third or subsequent offense, such bail, in many cases, might be wholly inadequate.

It is apparent that careful drivers of motor cars, who have no desire to violate the law, are now held within what they believe to be unjust restrictions and are frequently made the victims of an abuse of legal process. But the remedy for any existing injustice must carry with it appropriate safeguards, and the more that is left to the judgment of the driver, the more important it is that recklessness should be heavily penalized.

The bill contains restrictions upon the use of cars without the consent of their owners, a frequent source of accident. But such a restriction is also contained in a separate bill amending the Penal law, and will not be lost by the disapproval of this bill. It would also seem advisable that better means should be provided, with respect to the issuing of licenses, for ensuring the competency of chauffeurs. One of the imperfections of this bill is that the useful provision for the suspension of licenses does not apply to violation of the requirements as to safe speed.

In view of these considerations, other objections to the bill need not be discussed. The bill is disapproved.

(Signed) CHARLES E. HUGHES

The Consolidated Public Service Commissions Law

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909^{*}

MEMORANDUM filed with Senate bill No. 272, entitled

“An act to establish the public service commissions and prescribing their powers and duties, and to provide for the regulation and control of certain public service corporations, and making an appropriation therefor, constituting chapter forty-eight of the consolidated laws.”

NOT APPROVED.

In view of the fact that the Consolidated Railroad law has not been approved, it has been thought preferable not to approve this bill, but that it will be more convenient to leave the two laws as they now are until they can be together incorporated in the consolidated statutes.

(Signed) CHARLES E. HUGHES

The Consolidated Railroad Law

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1538, entitled

“An act in relation to railroads, constituting chapter forty-nine of the consolidated laws.”

NOT APPROVED.

This bill cannot be signed without running the risk of making a serious and inadvisable change in the laws of the State with regard to railroads. The matter relates to rates of fare and freight charges. Section 37 of the Railroad law (as amended in 1892) provides that, with the exceptions stated, a railroad corporation may charge three cents a mile.

Section 38 of the Railroad law embodies the following provision adopted in 1850, to wit:

“The legislature may, when any such railroad shall be open for use from time to time, alter or reduce the rate of freight, fare or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with said profits less than ten per centum per annum on the capital actually expended; nor unless on an examination of the amounts received and expended, to be made by the State Engineer and Surveyor and the Comptroller they shall ascertain that the net income derived by the company from all sources, for the year then last past, shall have exceeded an annual income of ten per cent. upon the capital of the corporation actually expended.”

An amendment in 1882, substituted the Board of Railroad Commissioners for the State Engineer and Surveyor and Comptroller, as the officers to make the prescribed examination.

This section as will be seen provides that, without the consent of the railroad corporation, freight rates, fares or other profits shall not be reduced so as to produce with such profits “less than ten per centum per annum on the capital actually invested.”

In 1907 the Public Service Commissions law was enacted, which provides in section 26 as follows:

“§ 26. Safe and adequate service; just and reasonable charges.—Every corporation, person or common carrier performing a service designated in the preceding section, shall furnish, with respect thereto, such service and facilities as shall be safe and adequate and in all respects just and reasonable. All charges made or demanded by any such corporation, person or common carrier for the transportation of passengers, freight or property or for any service rendered or to be rendered in connection therewith, as defined in section two of this act, shall be just and reasonable and not more than allowed by law or by

order of the commission having jurisdiction and made as authorized by this act. Every unjust or unreasonable charge made or demanded for any such service or transportation of passengers, freight or property or in connection therewith or in excess of that allowed by law or by order of the commission is prohibited."

Under this all charges must be "just and reasonable" and "not more than allowed by law or by order of the commission having jurisdiction and made as authorized by this act."

Section 49 of the Public Service Commissions law authorizes the commission to determine in the manner provided "the just and reasonable rates, fares and charges to be thereafter observed and in force as the maximum to be charged for the service to be performed and shall fix the same by order to be served" upon the railroad corporations affected.

The Public Service Commissions law repealed all acts and parts of acts which were in conflict therewith.

The present bill, containing the proposed Consolidated Railroad law, re-enacts section 37 of the old Railroad law with its provision for the charge of three cents a mile (new section 57) and also in new section 59 makes the following provision:

"§ 59. Legislature may alter or reduce fare. The legislature may, when any such railroad shall be opened for use, from time to time, alter or reduce the rate of freight, fare or other profits upon such road; but the same shall not, without the consent of the corporation, be so reduced as to produce with such profits less than ten per centum per annum on the capital actually expended; nor unless on an examination of the amounts received and expended, to be made by the public service commission, it shall ascertain that the net income derived by the corporation from all sources, for the year then last past, shall have exceeded an annual income of ten per centum upon the capital of the corporation actually expended."

This, it will be noted, is the provision of section 38 of the old Railroad law, save that it is amended by the reference to the Public Service Commission. A very serious question is presented as to the effect of this amendment.

Under a law which has been passed providing for a construction of the new consolidated statutes, the incorporation therein of provisions which have been heretofore impliedly repealed or superseded, is not to be construed as reviving them. In view of this rule it might be assumed that the incorporation in the consolidated law of the provision for a rate of three cents a mile was not intended by the Legislature to work any restoration of that provision or to impair the effect to be attached to the Public Service Commission's law. But the same, it would seem, cannot be said of section 59 above quoted.

For this is not the incorporation in the consolidated statute of section 38 of the old law, or the reproduction of the old section. The old section has been amended so as to provide that the examination to determine the net income of the corporation is to be made "by the public service commission."

The provision therefore is not old, but new. It is not a reenactment or a reproduction. It contains direct reference to the Public Service Commission so as clearly to indicate an intent to make the provision operative under existing conditions and through the new agency created by the Public Service Commission's law.

If the old section 38 be regarded as repealed because of conflict with the provisions of the Public Service Commission's law, then there would be no assurance that it would not be restored to efficacy by this bill if enacted into law. On the contrary there would seem to be strong ground for the conclusion that it would be restored, and that all basis for any claim of jurisdiction on the part of the Public Service Commission to change fares or freight rates except upon the conditions stated in the section, would be destroyed.

It is true that provision of the section is that the Legislature shall not change the rates except upon the conditions stated; but it would certainly be claimed that this provision

if effective would not leave the Public Service Commission free to exercise a broader power.

The presence of this provision in this bill in the form it has assumed, necessarily forces the question whether, in the light of the Public Service Commissions law, the rule laid down in the section should be the law of the State. The decision of this question cannot be escaped, nor is it altered because it is presented in connection with one of the consolidated laws.

So far as the past is concerned the inclusion of the provision in the consolidated statute is not necessary to protect any corporation in any of its rights. For if it could be supposed that any corporation had acquired any rights under the former law, the inclusion of the provision is not needed for its protection. Whatever rights it may have it will retain, and whether any such rights exist or do not exist by virtue of the old law it is not necessary to consider.

The inclusion of this provision in the consolidated statute is important only as it provides a rule for the future. And such a rule is clearly inadvisable.

The criterion of rates and charges should be whether they are just and reasonable, and whenever any question arises as to this point opportunity should be afforded for a fair and impartial examination as provided under the Public Service Commissions law. A rule that there should be no change in rates and charges unless it leaves the corporation a net income of 10 per cent. upon the capital actually expended, would in many cases be clearly unjust to the public. Frequently a large part of the capital expended is represented by bonds bearing a rate of interest under 6 per cent., and a rule that would give the company a net annual income of 10 per cent. upon the capital expended might be found to provide 12 or 15 per cent. for returns upon stock investment.

The Legislature, so far as can be ascertained, has not recently regarded itself as bound by the old section. Two years ago a bill was passed providing for a maximum rate of two cents a mile for passenger fares in general, and last year, with respect to certain city lines, a five-cent fare bill was

passed. This was not the result of any inquiry showing the conditions provided for by the section.

The policy defined in the Public Service Commissions law providing for due inquiry to ascertain what rates under the varying circumstances of particular cases are really just and reasonable, should be maintained. I have no right to assume, in view of the fact that the section is actually amended and contains an express reference to the Public Service Commission, that the section would not be operative. On the contrary, I am constrained to the opinion that the new section, whatever view might be entertained of the old, would be given full force and effect.

I regret any inconvenience that may be caused by the failure to enact the consolidated law. But this inconvenience will be very slight. The consolidated laws are not complete. Several chapter numbers have been left blank. For example, chapter number 8 is left for the Code of Civil Procedure; chapter number 9 for the Code of Criminal Procedure; and chapter number 10 for the Condemnation law.

Editions of the Railroad law and the Public Service Commissions law are easily obtainable and have wide circulation, in a separate volume, and no practical hardship will be sustained by the failure of this bill. Certainly it is better to have it fail than to enact the Railroad law with the provision in it to which I have referred.

The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

Permitting Life Insurance Companies to Issue Policies of Insurance and Annuities With Special Rates of Premium to Labor Unions and Other Organizations

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 806 (Assembly Reprint No. 2357), entitled

“An act to permit life insurance companies to issue policies of insurance and annuities with special rates of premium to labor unions and other organizations.”

NOT APPROVED.

This bill provides that any life insurance company doing business in this State may issue policies of life or endowment insurance “on the industrial plan with weekly or monthly payment of premiums,” with special rates, less than the usual rates, to members of labor unions, lodges, beneficial societies or similar organizations, or employees of a single employer, who, through their secretary or other officer, or employer, may take out insurance “in an aggregate of not less than one hundred members and pay their premiums through such officer or employer.”

Upon the hearing certain fraternal organizations and labor unions opposed the bill upon the ground that its operation would be injurious to their just interests.

Apart from the grounds thus urged, the bill has a most important bearing. It in effect introduces a definition of “industrial insurance” as involving either weekly or monthly payment of premiums. In view of other provisions of law bearing upon industrial insurance, such a definition should not be adopted by a phrase appearing in an amendment of this sort, but should receive independent consideration and careful study of all its consequences, the necessity for which can hardly be supposed to have been suggested to the Legislature in connection with this bill.

The bill is therefore disapproved.

(Signed)

CHARLES E. HUGHES

Amending the Public Service Commissions Law, Relative to the Approval of Issue of Stocks, Bonds and Other Forms of Indebtedness

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1229, entitled

“An act to amend the Public Service Commissions law, relative to the approval of issue of stocks, bonds and other forms of indebtedness.”

NOT APPROVED.

Assuming it to be advisable to make provision for the purposes described in this amendment, it should be carefully safeguarded, and the same policy should be adopted with regard to all corporations subject to the Public Service Commissions law. It does not seem advisable to approve the amendment in its present form, and it is deemed preferable to refer the matter to the Legislature for their consideration in the light of the recommendations of the Public Service Commission.

(Signed) CHARLES E. HUGHES

Amending the Agricultural Law, in Relation to Condensed Milk and Evaporated Milk and the Branding of Cheese and Butter

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 2185, entitled

“An act to amend the Agricultural law in relation to condensed milk and evaporated milk and the branding of cheese and butter.”

NOT APPROVED.

The policy reflected in recent legislation of requiring commodities to be suitably branded or labeled is of great im-

portance to the just interests of those engaged in agricultural and industrial pursuits and for the protection of the general public. This bill, however, has been criticised upon the ground that the proposed description "watered process cheese" is not absolutely just, and that another description might readily be required which would fully meet the purpose in view and furnish no basis for any misapprehension.

In order that this matter may be considered and full justice be done in securing the proper branding of the commodity in question, it seems better that it should be referred to the next session of the Legislature, and that this bill should not be approved.

(Signed) CHARLES E. HUGHES

**Providing that the Heads of Police Departments in
Cities of the First and Second Class Shall Divide
the Force into Three Platoons**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1462, entitled

"An act to promote the health and efficiency of policemen in cities of the first and second class."

NOT APPROVED.

This bill provides that the heads of police departments in cities of the first and second class shall divide the force into three platoons. It is the same measure that was before me last year and was then disapproved. Its supporters state that "The three-platoon system is now in operation in the cities of Buffalo, Rochester, Troy, Syracuse and Binghamton." It can be put in operation in any other city where the city administration desires it. It is simply a question of local government and I am unable to see upon what ground the State should undertake to dictate to the municipality the manner in which its police force should be divided for tours of duty.

As I said last year, I do not deal with the merits of the three-platoon system but simply with the question as to the authority under which such a change, if desirable, should be effected.

Upon the ground, therefore, that the appeal for any such change in methods should be made to the local authorities, who have full power in the premises, this bill is disapproved.

(Signed) CHARLES E. HUGHES

**Amending the Business Corporations Law, in Relation
to Corporations Having Shares of Capital Stock
Without Nominal or Par Value**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 1577, entitled

“An act to amend the Business Corporations law, in relation to corporations having shares of capital stock without nominal or par value.”

NOT APPROVED.

This bill represents an important departure with regard to the capitalization of corporations, which has received the approval of public spirited students of corporate problems. But if such a measure be enacted, its administrative features and its relation to the general statutes of the State, such as those providing for taxation, should be worked out in an entirely practicable way and leave no question of its results. This bill is technically defective, by reason of an inaccurate reference, with regard to the imposition of the stock transfer tax, and it is also opposed by the State Comptroller because in his judgment it would not be adjusted, in a suitable way, to the present plan of annual franchise assessment.

It has been suggested that the bill might be enacted into law and be subsequently amended to remove the ground of

these objections. But it seems to me that the better course is to perfect the plan, and to provide for such adjustments as may be necessary, before it is approved.

(Signed) CHARLES E. HUGHES

Providing for the Assessment and Collection of Deficiencies in Amounts Heretofore Raised by Assessment to Defray the Expense of Certain Local Improvements in the City of Syracuse

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 2391, entitled

“An act to provide for the assessment and collection of deficiencies in amounts heretofore raised by assessment to defray the expense of certain local improvements in the city of Syracuse.”

NOT APPROVED.

The purpose of this bill is to provide for the assessment upon the properties originally assessed of deficiencies alleged to exist with respect to certain local improvements made, for the most part, about ten years ago. It is a requirement of obvious justice that assessment for such deficiencies should be promptly made when their necessity and cause may be the subject of suitable consideration. It does not seem to be proper that where property has been dealt in for many years upon the assumption that it is free from lien, assessments of this sort should be made against it.

The city is represented by its officers, and the city as a whole properly bears the consequences of laxity and neglect in administration. If any past administration has failed to perform its duty with regard to such deficiencies as are now claimed to exist, it does not follow that it would be fair to make such assessments as those for which this bill provides. After the lapse of so long a time it may be difficult to deal with the matter on any basis which is entirely free from criti-

cism. But the better course would seem to be, in view of all the circumstances of this case, for the city as a whole to meet whatever liability actually exists, rather than to impose it upon particular properties by legislation of this character.

(Signed) CHARLES E. HUGHES

Authorizing the Cancellation and Annulment of Certain Assessments Made Against Property in New York City

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 444, entitled

“An act to authorize and empower the comptroller of the city of New York, in his discretion, to cancel and annul certain assessments in said city,” and

Senate bill No. 1159, entitled

“An act to authorize the commissioners of the sinking fund of the city of New York to cancel and annul certain taxes, assessments and water rates now existing liens against and affecting property situated in the borough of Brooklyn, city of New York, belonging to Saint Malachi’s Roman Catholic church,” and

Assembly bill No. 1024, entitled

“An act to authorize the commissioners of the sinking fund of the city of New York, to cancel and annul certain assessments made against the property of the Roman Catholic Church of Corpus Christi of the borough of Manhattan, city of New York, heretofore paid by it, and to authorize and provide for the refunding of such payments by the city comptroller.

NOT APPROVED.

During my first term I disapproved several bills of this sort, affecting a number of organizations and various religious

corporations, upon the ground that there should be a general law which would make equitable provision for the cancellation of assessments which had been improperly made.

Accordingly, at this session an act was passed, amending the Greater New York charter so as to empower the commissioners of the sinking fund, upon the certificate of the comptroller of the city, to "cancel and annul all taxes, assessments, Croton water rents and sales to said city" which "now are or may hereafter become a lien against any real estate" owned by any of the religious, charitable and benevolent corporations which are entitled to exemption under the Tax law.

The special bills above mentioned, so far as they provide for such cancellation and annulment in particular cases, are unnecessary as the general law has been passed to provide a remedy for the religious bodies mentioned in the bills, as well as for others in like case.

I have also recommended that suitable provision should be made for refunds of taxes and assessments improperly collected upon exempt property. To avoid the passage of a variety of special bills which may be needed to effect equitable returns of this sort, a general bill should be enacted to meet all proper cases. Whatever remedy is needed to carry out this policy can be readily supplied at the next session.

(Signed) CHARLES E. HUGHES

Amending the Act Making the Office of County Clerk in the County of Clinton a Salaried Office and Legalizing Certain Acts of the Board of Supervisors of Said County Affecting Said Compensation

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1392, entitled

“An act to amend chapter fourteen of the laws of eighteen hundred and sixty-one, entitled ‘An act making the office of county clerk, in the county of Clinton, a salaried office,’ in relation to the compensation, powers and duties of such clerk and legalizing certain acts of the board of supervisors of said county affecting said compensation.”

NOT APPROVED.

This bill amends the law of 1865 with regard to the power of the board of supervisors to fix the salary of the county clerk.

The bill also provides that “all acts and proceedings of the board of supervisors” from the year 1867 to the year 1908 “fixing or in any wise affecting or relating to the salary, fees or compensation of the county clerk” are in all respects “legalized, ratified and confirmed.”

Assuming that the object sought to be attained could under the Constitution be gained in this way, which is very doubtful, the policy of the bill I do not believe to be a sound one. It does not seem to me to be consistent with the maintenance of proper standards of administration, and with suitable regard for the substantial requirements of the statutes, that the law should be relaxed by legalizing provisions of this character.

The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

**Amending the Tax Law, in Relation to Exemptions from
Taxable Transfers**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 1869, entitled

“An act to amend the Tax law, in relation to exemptions from taxable transfers.”

NOT APPROVED.

This bill provides for an additional exemption from transfer taxes of property devised or bequeathed “for religious ceremonies, observances or commemorative services of or for the dead.” The bill is opposed by the State Comptroller upon the ground that the amendment is too general in form and that at all events it should be limited to such observances or commemorative services as relate to the decedent alone.

In view of the liberal exemptions already made by the law, which exemptions cover property devised or bequeathed “to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent hospital or infirmary corporation,” it would seem advisable that any additional exemption should be carefully defined with appropriate limitations.

The bill is therefore disapproved.

(Signed) CHARLES E. HUGHES

Amending the Public Health Law, Relating to the Practice of Veterinary Medicine

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 1500, entitled

“An act to amend the Public Health law, relating to the practice of veterinary medicine.”

NOT APPROVED.

This bill deals with the organization and continuance of the Board of Veterinary Medical Examiners. Without intending the slightest criticism upon the members of the board, or any disparagement of their important function, it seems clear to me that the constitution of the board is open to the same objection which has been made to the bill of this year relating to the State Board of Pharmacy, and to the bill of two years ago relating to practice in optometry.

Two years ago the optometry bill was disapproved upon the ground that the examiners to be appointed by the Regents were to be selected from those nominated by the Optical Society. This year's bill relating to the board of pharmacy was deemed objectionable upon the ground that the examiners were to be appointed by the Regents from those nominated by the Pharmaceutical Association.

While these associations and others of like class may have the most praiseworthy objects, and while doubtless great weight would be given by the appointing power to their recommendations, it does not seem to me sound policy to limit the appointing power to persons nominated by such private organizations and to constitute a state board upon that basis.

If the law relating to the Board of Veterinary Medical Examiners is to be amended, a change should be made with regard to the manner in which such board is constituted.

The bill is disapproved.

(Signed)

CHARLES E. HUGHES

Making the Office of Supervisor in the County of Livingston a Salaried Office

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

NOT APPROVED.

MEMORANDUM filed with Assembly bill No. 2010, entitled
"An act to make the office of supervisor in the county of Livingston a salaried office, to provide for the manner of auditing and paying accounts against the county, and to regulate generally the finances thereof."

NOT APPROVED.

This bill provides for the salaries of supervisors in Livingston county which are now covered by section 23 of the County law. That section contains several exceptions and the existence of any new exception should be pointed out by an appropriate amendment.

By section 5 of the bill, the class of county charges which may be paid by the county treasurer, without audit by the board of supervisors, is widely extended. If this is desirable in Livingston county, it would seem quite as desirable throughout the State. The policy, however, of such an extension does not commend itself to me. Proper powers of audit on the part of the board of supervisors, it would seem, should be maintained and whenever there is any claim that they are abused, the remedy is afforded at the polls.

(Signed) CHARLES E. HUGHES

Amending the Forest, Fish and Game Law

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

The following bills have not been approved because it is deemed inadvisable to continue the practice of making constant changes by special bills in the provisions of the Forest, Fish and Game law. This law was carefully revised only last year and a supplementary act was passed, making changes which, it was understood, would put the law upon a stable basis.

The bills referred to are as follows:

Assembly bill No. 107, entitled "An act to amend the Forest, Fish and Game law, in relation to the use of tip-ups in the waters of Greene county."

Assembly bill No. 1835, entitled "An act to amend the Forest, Fish and Game law, in relation to the use of scap nets."

Assembly bill No. 2262, entitled "An act to amend the Forest, Fish and Game law, in relation to taking bass in certain waters of Allegany county."

Assembly bill No. 2352, entitled "An act to amend the Forest, Fish and Game law, in relation to spearing in the Delaware river, in the town of Middletown, Delaware county."

Assembly bill No. 2212, entitled "An act to amend sections eighty-two and eighty-four of chapter one hundred and thirty of the laws of nineteen hundred and eight, entitled 'An act for the protection of forest, fish and game of the state.'"

Assembly bill No. 970, entitled "An act to amend chapter nineteen of the consolidated laws, being the Forest, Fish and Game law, in relation to the open season for trout in Delaware county."

Assembly bill No. 1004 (Senate Reprint No. 1514), entitled "An act to amend the Forest, Fish and Game law, in relation to the open season for hares and rabbits in Richmond county."

Assembly bill No. 582, entitled "An act to amend the Forest, Fish and Game law, in relation to the close season for perch in the county of Saratoga."

Assembly bill No. 1301, entitled "An act to amend the

Forest, Fish and Game law, in relation to open season for woodcock in certain localities."

Assembly bill No. 1120, entitled "An act to amend the Forest, Fish and Game law, in relation to the open season for quail in Rockland county."

Assembly bill No. 1470, entitled "An act to amend the Forest, Fish and Game law, in relation to the open season for squirrels in Steuben county."

(Signed) CHARLES E. HUGHES

Duplicates of or in Conflict with Other Bills

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

The following bills are not approved because they are duplicates of, or in conflict with, other bills. These bills are as follows:

Assembly bill No. 1884, entitled "An act to amend the Election law, in relation to the delivery of enrollment blanks to voters."

Senate bill No. 519, entitled "An act to amend the Tax law, in relation to taxable transfers."

Senate bill No. 1353, entitled "An act to amend the Banking law, in relation to investments of capital."

Senate bill No. 1524, entitled "An act to amend the Insurance law, in relation to the insurance of automobiles and other vehicles."

Senate bill No. 1534, entitled "An act making an appropriation for the payment for the fiscal year beginning on the first day of October, nineteen hundred and nine, of interest on the canal debt contracted or to be contracted under article seven, section four of the Constitution."

Senate bill No. 1532, entitled "An act making an appropriation for the payment for the fiscal year beginning on the first day of October, nineteen hundred and eight, of interest

on the canal debt contracted or to be contracted under article seven, section four of the Constitution."

Senate bill No. 1531, entitled "An act to provide ways and means for the annual contribution to the canal debt sinking funds."

Assembly bill No. 2380, entitled "An act to provide ways and means for the annual contribution to the highway improvement sinking fund."

Assembly bill No. 2382, entitled "An act making an appropriation for the payment of interest on the debt for highway improvement contracted or to be contracted under article seven, section twelve of the constitution, and as provided by law for the fiscal year beginning on the first day of October, nineteen hundred and eight."

Assembly bill No. 2383, entitled "An act making an appropriation for the payment of interest on the debt for highway improvement contracted or to be contracted under article seven, section twelve of the Constitution, and as provided by law, for the fiscal year beginning on the first day of October, nineteen hundred and nine."

Assembly bill No. 2260, entitled "An act to authorize the board of trustees of the village of Ellenville, in the county of Ulster, to provide for a supply of water for such village and to raise the necessary funds therefor by issuing and selling village bonds."

Assembly bill No. 2252, entitled "An act to amend the Religious Corporations law, in relation to property of extinct churches."

Assembly bill No. 1445, entitled "An act to provide for the election of a police justice in certain of the towns of this state."

Assembly bill No. 2222, entitled "An act to legalize bonds of the village of Canajoharie, New York, issued and to be issued for the following purposes, namely: Defraying the expense of establishing a system of waterworks in and for said village and supplying its inhabitants with water, defraying the expense of paving and curbing Church street in said village and providing said street with a storm sewer, defraying

the expense of constructing a fifteen-duct conduit in said village for the purpose of providing underground accommodations for public service wires and cables, and to legalize all proceedings of the board of trustees of said village in relation and subsequent thereto, and to provide for the principal and interest of said bonds, and to legalize all proceedings of the board of trustees in relation thereto, including the several resolutions submitted to the qualified electors of said village at special elections held on the thirtieth day of June, nineteen hundred and eight, on the twenty-eighth day of August, nineteen hundred and eight, on the tenth day of October, nineteen hundred and eight, and on the thirtieth day of January, nineteen hundred and nine, and legalizing the vote on each and all of said propositions submitted at the said special elections as aforesaid."

Assembly bill No. 945 (Senate Reprint No. 1458), entitled "An act to amend the Greater New York charter, relative to the powers of the commissioners of the sinking fund of the city of New York, in their discretion, to cancel and annul taxes, assessments, Croton water rents, et cetera, in certain cases."

Assembly bill No. 2019, entitled "An act to make the office of sheriff of the county of Queens a salaried office, and regulating the management of said office."

Assembly bill No. 1509, entitled "An act to amend the public health laws, relating to vital statistics."

Assembly bill No. 1801, entitled, "An act to amend the Town law, relative to lands for burial purposes."

(Signed) CHARLES E. HUGHES

Special City Bills Not Accepted by the Cities Affected

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

The following bills have not been approved for the reason that they are special city bills and were not accepted by the

cities in question, in accordance with the Constitution. These bills are as follows:

Senate bill No. 1066, entitled "An act to provide for the regulation and improvement of the railroad, terminals and approaches thereto, and of the motive power to be used thereon, of the New York Central and Hudson River Railroad Company in the borough of Manhattan, city of New York, and for discontinuing the use by said company of certain streets, avenues, public parks or places in said borough, at grade, and for such purposes to authorize the city of New York to grant real property, rights and privileges to said railroad company and to acquire other real property, rights and privileges from said railroad company."

Assembly bill No. 2053 (Senate reprint No. 1525), entitled "An act to amend the General Business law, relative to employment agencies."

Senate bill No. 1007 (Assembly reprint No. 2302), entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' in relation to permits to carry pistols, and in relation to the police pension fund."

Assembly bill No. 2211, entitled "An act to amend the Greater New York charter, in relation to the appointment and compensation of drivers of patrol wagons."

Assembly bill No. 2387, entitled "An act to amend the Greater New York charter, relative to the compensation of commissioners of estimate and appraisal."

Assembly bill No. 1026, entitled "An act to amend chapter six hundred and fifty of the laws of nineteen hundred and four, entitled 'An act to revise the charter of the city of Rome,' generally."

Senate bill No. 1084, entitled "An act to amend the charter of the city of Johnstown, generally."

Assembly bill No. 2270, entitled "An act to incorporate the city of New Rochelle."

Assembly bill No. 2031, entitled "An act to amend chapter three hundred of the laws of nineteen hundred and four, entitled 'An act to revise and consolidate the several acts relative to the city of Niagara Falls.'"

Assembly bill No. 1878, entitled "An act to amend chapter three hundred of the laws of nineteen hundred and four, entitled 'An act to revise and consolidate the several acts relative to the city of Niagara Falls,' generally." *

Senate bill No. 907, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' in relation to appeals."

Assembly bill No. 1945, entitled "An act to safeguard the records in the office of the clerk of the county of New York in the county courthouse in said county."

Assembly bill No. 1944, entitled "An act to amend chapter six hundred and seventy of the laws of nineteen hundred and seven, entitled 'An act to authorize the erection, furnishing and equipment of a municipal building at the Manhattan terminal of the New York and Brooklyn bridge in the city of New York,' in relation to construction of the same and accommodation of city departments therein."

Senate bill No. 1517, entitled "An act to amend the Greater New York charter, in relation to contracts of the department of street cleaning for the removal of snow and ice."

Assembly bill No. 1515, entitled "An act to authorize the board of assessors of the city of New York to determine and allow the damage sustained by owners of real property in the borough of Manhattan, city of New York, by reason of the construction of lateral driveways to connect the grade at One Hundred and Forty-fifth street with the grade of Riverside drive."

Assembly bill No. 1704, entitled "An act to amend the Greater New York charter, in relation to the powers of the board of estimate and apportionment."

Assembly bill No. 880, entitled "An act to permit the reconveyance from the city of New York to the former owners thereof of certain real estate in the city of New York acquired by said city in a proceeding brought under chapter seven hundred and twelve of the laws of nineteen hundred and one to acquire real estate and interests therein for the

construction of a terminal at the westerly or Manhattan end of the New York and Brooklyn bridge."

Assembly bill No. 2166, entitled "An act to amend the Greater New York charter, relative to the department of correction."

Assembly bill No. 2224, entitled "An act authorizing and empowering the board of estimate and apportionment of the city of New York to select and designate a site for an armory within the territory of Crotona park, in the borough of the Bronx, city of New York."

Senate bill No. 528, entitled "An act to amend section fifteen hundred and forty-three-a of the Greater New York charter, in relation to employees in the office of the borough president or any of the bureaus thereof."

Senate bill No. 1317, entitled "An act to amend chapter seven hundred and twenty-four of the laws of nineteen hundred and five, entitled 'An act to provide for an additional supply of pure and wholesome water for the city of New York; and for the acquisition of lands or interest therein, and for the construction of the necessary reservoirs, dams, aqueducts, filters and other appurtenances for that purpose, and for the appointment of a commission with the powers and duties necessary and proper to attain these objects,' in relation to water for the city of Newburgh, and to confer jurisdiction upon the state water supply commission in respect thereto."

Senate bill No. 1426, entitled "An act to confer certain rights upon the city of Mount Vernon and upon the city of New York, with respect to supplying water to the said city of Mount Vernon and the inhabitants thereof from the water supply of the city of New York, and to confer jurisdiction upon the state water supply commission in respect thereto."

Senate bill No. 1210, entitled "An act to amend the Greater New York charter, in relation to the fixing and regulating of the salaries of members of the supervising and teaching staff of the public schools in the city of New York, and to the general school fund."

Assembly bill No. 1745 (Senate reprint No. 1404), entitled "An act to amend the Greater New York charter, in relation to deficiencies in collections of taxes."

Senate bill No. 1042, entitled "An act to amend the Greater New York charter, in relation to regulating the sale in the public streets of the city of New York of tickets of admission to places of amusement."

Senate bill No. 1467, entitled "An act to authorize and direct the courthouse board, appointed pursuant to chapter three hundred and thirty-six of the laws of nineteen hundred and three, as amended by chapter one hundred and twelve of the laws of nineteen hundred and five, to fix and determine the site for a courthouse in the county of New York, at and near the site of the present county courthouse; providing for the removal of all buildings except the city hall, from City Hall park, and defining the purposes for which such building shall be erected."

Assembly bill No. 1548 (Senate reprint No. 1403), entitled "An act to amend the Greater New York charter, in relation to a uniform system of accounting."

Assembly bill No. 2268, entitled "An act to amend chapter three hundred and one of the laws of nineteen hundred and three, entitled 'An act authorizing and empowering the park commissioner of the borough of the Bronx, New York city, in his discretion, to lease certain lands in McCombs dam park to any athletic or boat club or association for the establishment of a public recreation ground for outdoor athletics, et cetera,' in relation to leases in Pelham Bay park."

Senate bill No. 1523, entitled "An act to amend the Greater New York charter, in relation to rights of owners of land abutting on aqueduct."

Senate bill No. 575, entitled "An act amending the Greater New York charter, relative to retirement from active service of officers, clerks and employees."

Assembly bill No. 1547 (Senate reprint No. 1402), entitled "An act to amend the Greater New York charter, in relation to the public improvement fund, and the issue of corporate stock instead of assessment bonds."

Senate bill No. 468, entitled "An act to empower the board of assessors in the city of New York, in its discretion, to ascertain and determine the damages to the real property of

James F. Donnelly on East One Hundred and Seventy-fourth street, caused by the changing of the original grade of said East One Hundred and Seventy-fourth street, between Clay avenue and Anthony avenue, in said city, borough of Bronx, and award damages to him, to the extent his said real property may have depreciated in value in consequence thereof."

Assembly bill No. 1506 (Senate reprint No. 1379), entitled "An act to amend chapter one hundred and thirty-one of the laws of eighteen hundred and eighty-five, entitled 'An act to incorporate the city of Amsterdam,' generally."

(Signed) CHARLES E. HUGHES

Unnecessary, Defectively Drawn, Unconstitutional, or for Purposes Which Can Be Suitably Accomplished Under General Laws, or Should be Provided for, if at all, by the Amendments to the General Law, or Are Objectionable and Inadvisable by Reason of Proposed Changes — The Omnibus Veto

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

The following bills are not approved, because they are unnecessary, or defectively drawn, or unconstitutional, or are for purposes which can be suitably accomplished under general laws, or should be provided for, if at all, by amendments to the general law, or are objectionable and inadvisable by reason of proposed changes. These bills are as follows:

Assembly bill No. 2141, entitled "An act to amend the Election law, in relation to the times and purposes of official primaries."

Assembly bill No. 2322, entitled "An act to amend article eight of chapter thirty-three of the consolidated laws, known as the 'Lien law,' in relation to the discharge of a lien on personal property."

Senate bill No. 840 (Assembly reprint No. 2059), entitled

"An act to amend the charter of the village of Bath, in relation to claims against the village, and electric wires."

Assembly bill No. 2323, entitled "An act to amend the Village law, in relation to the dedication of streets."

Assembly bill No. 1564, entitled "An act to amend the Code of Civil Procedure, in relation to appointment of successors to executors and administrators."

Assembly bill No. 1305 (Senate reprint No. 1371), entitled "An act to confirm the acts of commissioners appointed to lay out and assess damages upon the opening of a public highway in the town of New Castle, in Westchester county; to legalize and confirm the acts and proceedings of David L. Barnum and Frank T. Bailey, as commissioners of highways of said town; to authorize the town board of auditors of said town to audit the contracts in relation to the building of said highway; and to authorize the said town to pay for the construction of said highway, and to raise money therefor."

Assembly bill No. 2078, entitled "An act to incorporate the fire department of the unincorporated village of Stony Brook, Suffolk county, New York."

Assembly bill No. 1849, entitled "An act to provide for the refunding of certain taxes erroneously paid into the state treasury by the Syracuse, Binghamton and New York Railroad Company."

Assembly bill No. 2024, entitled "An act authorizing the village of Scotia, in the county of Schenectady, to borrow money for the payment of indebtedness incurred prior thereto."

Assembly bill No. 2164, entitled "An act making Cedar river, in the counties of Essex and Hamilton, a public highway."

Assembly bill No. 132, entitled "An act to provide for the election of a surrogate in the county of Nassau, and to fix the salary of said surrogate."

Assembly bill No. 2305, entitled "An act to authorize the police commissioner of the city of New York, in his discretion, to open and inquire into the case of Frank C. Hochfeldt, formerly a patrolman in the police department of said city."

Assembly bill No. 1073, entitled "An act to enable the commissioner of public safety of the city of Rochester to reinstate Thomas W. Rice, formerly a captain of truck company number three, in the fire department of the said city."

Senate bill No. 915, entitled "An act to amend section twenty-seven of chapter twenty-two of the laws of nineteen hundred and nine, entitled 'An act in relation to the elections, constituting chapter seventeen of the consolidated laws,' relating to primary elections."

Senate bill No. 577, entitled "An act to amend the Negotiable Instruments law, relating to forged indorsements."

Senate bill No. 1046, entitled "An act to amend the Public Health law, in relation to the application of certain provisions to the village of Saranac Lake."

Senate bill No. 1081, entitled "An act to amend the Insurance law, in relation to the exception of state or subordinate granges or bodies of patrons of husbandry from certain of its provisions."

Senate bill No. 1569, entitled "An act to amend the Tax law, in relation to tax-roll and collector's warrant."

Assembly bill No. 1045, entitled "An act to amend the Tax law, relative to deduction from special franchise tax for local purposes."

Assembly bill No. 1102, entitled "An act to amend the Tax law, in relation to the assessment of waste or barren lands which have been planted with trees."

Assembly bill No. 1230, entitled "An act to amend the Election law, in relation to primary districts, polling places and election officers."

Assembly bill No. 1268, entitled "An act to amend the Penal law, in relation to intrusion into any place of meeting of a secret fraternity."

Assembly bill No. 1491, entitled "An act to amend the Public Officers law, in relation to payment of premiums on bonds given by public officers."

Assembly bill No. 1492, entitled "An act to amend section two thousand three hundred and sixty-two of the Code of Civil Procedure, relative to fixing the proportional value of prior right or estate."

Assembly bill No. 1495 (Senate reprint No. 1410), entitled "An act to amend the Judiciary law, in relation to the payment of expenses of justices of supreme court designated to appellate division, in second department."

Assembly bill No. 1612, entitled "An act to amend chapter one hundred and three of the laws of nineteen hundred and six, entitled 'An act to make the office of county clerk of Ulster county a salaried office, and regulating management of said office,' relative to an additional assistant."

Assembly bill No. 1622, entitled "An act to amend the Election law, generally."

Assembly bill No. 1659, entitled "An act to incorporate the Lower Bridge Company."

Assembly bill No. 1692, entitled "An act to amend the Election law, relative to designation of places for registry and voting."

Assembly bill No. 1711, entitled "An act to authorize the board of trustees of the village of Hempstead, Nassau county, New York, to regulate the construction, alteration or removal of all buildings and structures, and also to regulate the construction, alteration or removal of plumbing and drainage systems in said village of Hempstead."

Assembly bill No. 1724, entitled "An act authorizing the board of estimate and apportionment of the city of New York, to select a site and to erect a monument to the memory of Thomas Dongan, and authorizing an appropriation therefor."

Senate bill No. 1387, entitled "An act relative to the powers and duties of the trustees of public lands of the town of Rye, in Westchester county."

Assembly bill No. 2261, entitled "An act to legalize, ratify and confirm the proceedings of the trustees and officers and legal voters of the village of Valatie, relative to the issuance and sale of certain bonds of said village of Valatie."

Senate bill No. 321, entitled "An act to amend section fifteen of title two of chapter eight hundred and eighteen of the laws of eighteen hundred and sixty-eight, entitled 'An act to incorporate the village of Port Chester, New York,' with reference to the treasurer's annual report."

Senate bill No. 558, entitled "An act to authorize the 'Middle Patent Rural Cemetery Association' to purchase or otherwise take and hold and dispose of additional land by and with the consent of the board of supervisors of the county of Westchester, and authorizing said board of supervisors to grant such consent."

Assembly bill No. 2076, entitled "An act to amend chapter three hundred and eighty of the laws of nineteen hundred and two, entitled 'An act to make the office of sheriff in the county of Ontario a salaried office,' in relation to salary of turnkey."

Senate bill, No. 721, entitled "An act to amend the Village law, relative to the form of the village assessment-roll."

Senate bill No. 888, entitled "An act to amend the Village law, in relation to power of a village board of trustees to license peddlers and hawkers."

Assembly bill No. 1658, entitled "An act to amend the Railroad law, in relation to changing the names of stations."

Assembly bill No. 1799, entitled "An act to amend the Town law, in relation to undertakings of supervisor and collector."

Assembly bill No. 1426, entitled "An act to amend the Town law, in relation to legalizing the calling of special meetings of the town board heretofore held."

Assembly bill No. 1239, entitled "An act to amend the Town law, in relation to town charges in the county of Genesee."

Assembly bill No. 1740, entitled "An act to amend the Town law, relating to town auditors."

Assembly bill No. 1236, entitled "An act to amend the Tax law, in relation to the collection of taxes."

Senate bill No. 1411, entitled "An act to amend the Tax law, in relation to the compensation and the powers and duties of the state board of tax commissioners."

Assembly bill No. 2249, entitled "An act to amend the Tax law, in relation to the compensation, and the powers and duties of the state board of tax commissioners."

Assembly bill No. 548, entitled "An act to amend the Tax law, in relation to collector's receipts."

Assembly bill No. 752, entitled "An act to amend the Stock Corporations law, relative to the increase or reduction of capital stock."

Senate bill No. 640, entitled "An act to amend 'An act in relation to legislation, constituting chapter thirty-two of the consolidated laws,' in regard to the publication of laws passed by the legislature, in four newspapers in the county of New York."

Assembly bill No. 1083, entitled "An act authorizing the fire commissioner of the city of New York to allow a pension to Marcella A. Graham, the sister of a former member of such department."

Assembly bill No. 2008, entitled "An act to amend the Election law, relative to election officers."

Assembly bill No. 1672, entitled "An act to amend the agricultural law, entitled 'An act in relation to agriculture, constituting chapter one of the consolidated laws,' in relation to samples of milk that have been tested at butter and cheese factories and to licenses to be issued by the commissioner of agriculture."

Assembly bill No. 1430, entitled "An act to amend the Drainage law, generally."

Assembly bill No. 2111, entitled "An act to legalize, validate and confirm all acts and proceedings of the board of trustees of the village of Waterloo, Seneca county, relating to the establishment of a sewer system and disposal plant in said village, and the submission to the voters of said village of a proposition for the construction of said sewer system and disposal plant, and for an appropriation of one hundred thousand dollars, or such part thereof as might be required for the construction thereof, and to the purchase of lands for said sewer system and disposal plant, and to the making of contracts for the construction of same, and to the issue and sale of bonds to the amount of ninety thousand dollars for the payment of the expenses thereof, and to legalize and validate the adoption of a proposition, submitted at a special election held in said village on the twenty-seventh day of May, nineteen hundred and eight, to authorize the construction of said complete sewer system and disposal plant, and the issuing of bonds not exceeding one hundred thousand dollars for such purposes, and to legalize and validate the sale heretofore made by such village of said bonds, and to provide for the

delivery of the same or a resale thereof, and to legalize and validate the said bonds, and to authorize the said village of Waterloo to raise annually by tax the sums necessary to pay said bonds and the interest thereon, and to provide a sewer commission for such village to continue the construction of such sewer system and disposal plant."

Senate bill No. 1448, entitled "An act to amend chapter forty-seven of the laws of eighteen hundred and sixty-nine, entitled 'An act regulating auction sales in the village of Wellsville,' in relation to transient retail business in such village."

Assembly bill No. 2107, entitled "An act to amend the Greater New York charter, relative to the powers of the board of estimate and apportionment and the board of commissioners of the sinking fund of the city of New York."

Assembly bill No. 1889, entitled "An act to amend the charter of the city of New Rochelle, in relation to terms of office of supervisors."

Assembly bill No. 921 (Senate reprint No. 665), entitled "An act to amend chapter three hundred and forty-two of the laws of nineteen hundred and two, entitled 'An act to make the office of supervisor in the county of Westchester a salaried office and to regulate the sessions of the board of supervisors in said county,' in relation to compensation of supervisors."

Senate bill No. 1201, entitled "An act to amend chapter four hundred and ninety-two of the laws of nineteen hundred and eight, entitled 'An act to provide for a commissioner of elections in and for the county of Onondaga.'"

Assembly bill No. 2103, entitled "An act to amend the Agricultural law, in relation to inspection and sale of seeds."

Assembly bill No. 1776, entitled "An act to amend the Public Health law, in relation to the application of certain provisions to the village of Saranac Lake."

Assembly bill No. 1857, entitled "An act to amend the Canal law, in relation to the powers of the superintendent of public works in respect to certain dams and locks on the Saranac river."

Assembly bill No. 1984, entitled "An act to amend the Agricultural law, relative to the apportionment of moneys for the promotion of agriculture."

Assembly bill No. 2351, entitled "An act to amend the Public Health law, in relation to the application of certain provisions to the village of Saranac Lake and the town and village of Liberty, in the county of Sullivan."

Assembly bill No. 2330, entitled "An act to confer jurisdiction upon the court of claims to hear and determine any and all claims against the state for damages alleged to have been sustained by any juror serving in any court of record in the state and to render judgment therefor."

Assembly bill No. 1018, entitled "An act to amend chapter six hundred and nineteen of the laws of nineteen hundred and six, entitled 'An act to authorize the comptroller of the state of New York to hear and determine the application of J. G. Stevens for the cancellation of the tax sale of eighteen hundred and seventy-seven of a portion of lot number fifty-nine of township number six, in the old military tract, in the town of Ellenburgh, county of Clinton,' generally."

Assembly bill No. 1376, entitled "An act conferring jurisdiction on the comptroller to hear and determine an application to set aside certain tax sales."

Assembly bill No. 1899, entitled "An act to confer jurisdiction upon a court of claims to hear, audit and determine the alleged claim of William Conway, as administrator of the goods, chattels, credits and personal property of James Hendy, deceased, against the state of New York for damages for the death of said James Hendy, deceased, and to render judgment therein."

Senate bill No. 1414, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine the alleged claim of Michael O'Keefe against the state of New York, for damages alleged to have been sustained by him while in the employ of the state, and to render judgment therefor."

Senate bill No. 1526, entitled "An act to confer jurisdiction upon the court of claims to hear, audit and determine

the alleged claim of John White against the state of New York, and to render judgment therefor."

Senate bill No. 1549, entitled "An act to legalize and confirm the grant of lands under the waters of Byram river, in the town of Rye, county of Westchester, heretofore made by the commissioners of the land office of the state of New York to Addison Johnson, and releasing the interests of the state of New York therein."

Senate bill No. 145, entitled "An act to amend section eight hundred and twelve of the Code of Civil Procedure, in relation to general regulations respecting bonds and undertakings."

Senate bill No. 662, entitled "An act to amend the Code of Civil Procedure, in relation to removal of tenant."

Senate bill No. 667, entitled "An act to amend the Code of Civil Procedure, relating to the application for ancillary letters."

Senate bill No. 1315, entitled "An act to amend section sixteen hundred and seventy-four of the Code of Civil Procedure, in relation to the cancellation of lis pendens."

Senate bill No. 1168, entitled "An act to amend chapter forty-seven of the laws of nineteen hundred and nine, entitled 'An act relating to prisons, constituting chapter forty-three of the consolidated laws,' relating to the appointment and compensation of the president."

Assembly bill No. 909, entitled "An act to repeal certain sections of the Public Health law, relating to adulterations."

Assembly bill No. 2001, entitled "An act to amend the Military law, in regard to compensation of employees of armories."

Assembly bill No. 1723, entitled "An act to amend the Membership Corporations law, relative to certificates of incorporation of hospital corporations."

Assembly bill No. 2314, entitled "An act to amend the Membership Corporations law, in relation to formation of proprietor's corporations."

Senate bill No. 1442, entitled "An act to repeal sections one hundred and fifteen, one hundred and sixteen and three hundred and fifteen of the Judiciary law."

Senate bill No. 1287, entitled "An act to amend the County law, in regard to the general powers of boards of supervisors."

Senate bill No. 1459, entitled "An act to amend chapter twenty-eight of the Consolidated Insurance laws of nineteen hundred and nine, relating to partnership or association of underwriters known as Lloyds."

Assembly bill No. 753, entitled "An act to amend the General Corporation law, in relation to the voluntary dissolution of corporations."

Senate bill No. 997, entitled "An act to amend section twenty-three of the General Corporation law, being chapter twenty-three of the consolidated laws, in relation to the voting of stock by trustees."

Assembly bill No. 2307, entitled "An act to amend the County law, in relation to the publication of session laws and concurrent resolutions."

Senate bill No. 857, entitled "An act to amend the County law, in relation to trusts for maintenance of cemetery lots and appurtenances."

Assembly bill No. 1180, entitled "An act to amend the Banking law, relative to the assessment and payment of department expenses and supervision of personal loan associations."

Senate bill No. 1262, entitled "An act to amend the Banking law, relative to the removal from office of trustees of savings banks."

Assembly bill No. 1248, entitled "An act to amend the Civil Service law, in relation to the place of residence of certain appointees in the service of the state."

Assembly bill No. 2372, entitled "An act to amend the Village law, in relation to notice before the accrual of certain causes of actions against villages for damages for personal injuries resulting from negligence."

Assembly bill No. 1485, entitled "An act to amend the Judiciary law, relating to court criers in the ninth judicial district."

Senate bill No. 1485, entitled "An act to amend the Banking law, in relation to deposits with superintendent."

Assembly bill No. 1307, entitled "An act to amend the charter of the city of Rensselaer, in relation to notice and other

procedure and liability of said city in respect to certain actions and causes of action."

Assembly bill No. 1569, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' in relation to procedure in certain actions."

Assembly bill No. 711, entitled "An act to amend the Village law, in relation to extending lighting system beyond village limits."

Assembly bill No. 1281, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' relating to the establishment and maintenance of a retirement fund for civil service employees."

Assembly bill No. 1503 (Senate reprint No. 1176), entitled "An act in relation to the municipal commission and the police, fire, sewer, water and light departments of the village of Herkimer, and repealing certain acts relating thereto."

Senate bill No. 813, entitled "An act to release the interest of the people of the state of New York in the estate of Mary F. Dowling, deceased, late of Chauncey, Westchester county, New York, both real and personal to Amelia M. Frost, her heirs and assigns forever."

Senate bill No. 548, entitled "An act to release to Magdalena Messerschmitt all the right, title and interest of the people of the state of New York in and to certain real estate in the borough of the Bronx, city and county of New York."

Assembly bill No. 1702, entitled "An act to amend the Civil Rights law, in relation to exhibition of photographs."

Assembly bill No. 1752 (Senate reprint No. 1368), entitled "An act to amend the Agricultural law, in relation to the giving of bonds by manufacturers and shippers of butter, cheese and milk."

Assembly bill No. 1240, entitled "An act to amend the County law, in relation to the bond of the treasurer of Genesee county."

Assembly bill No. 1973, entitled "An act to provide for an

additional justice of the supreme court in and for the fifth judicial district."

Assembly bill No. 746 (Senate reprint No. 1509), entitled "An act to amend the Tax law, in relation to transfer tax clerk in Ulster county."

Senate bill No. 1023, entitled "An act to amend the Civil Service law, in relation to the officers and employees of the commission."

Assembly bill No. 1901, entitled "An act to amend the Civil Service law, in relation to the officers and employees of the commission."

Senate bill No. 1415, entitled "An act to repeal sections one, two and three of chapter three hundred and thirteen of the laws of nineteen hundred and one, relative to the sale of unclaimed articles of baggage in hotels, and to amend section two hundred of chapter thirty-eight of the laws of nineteen hundred and nine, entitled 'An act in relation to liens, constituting chapter thirty-three of the consolidated laws,' and providing for the manner in which the lien of hotel-keepers and others may be enforced and also providing for the sale of unclaimed property left with hotel-keepers and others."

Assembly bill No. 1258 (Senate reprint No. 1370), entitled "An act to authorize the commissioners of the Home of the City and Town of Newburgh to raise moneys for building purposes."

Assembly bill No. 2100, entitled "An act to repeal chapter two hundred and twenty-seven of the laws of eighteen hundred and ninety-two, entitled 'An act in relation to the Anchorage in the city of Elmira.'"

Assembly bill No. 1942, entitled "An act to amend chapter twenty-two of the laws of nineteen hundred and nine, entitled 'An act in relation to the elections, constituting chapter seventeen of the consolidated laws,' in relation to the powers, duties and salaries of the state superintendent of elections and his appointees."

Assembly bill No. 1840, entitled "An act to amend the General Municipal law, relative to limitation of indebtedness."

Senate bill No. 735, entitled "An act to amend chapter six hundred and eighty-four of the laws of nineteen hundred and

five, entitled 'An act to supplement the provisions of law relating to the department of public works of the city of Syracuse.'"

Senate bill No. 939, entitled "An act to amend the Tax law, in relation to the salary of the transfer tax clerk in Albany county."

Assembly bill No. 1458, entitled "An act to authorize and direct the commissioners of the land office of the state of New York to grant and convey to the city of New York a certain strip of land situated in the borough of the Bronx, city of New York, to authorize and empower such city to convey the same, and to define the title and ownership of the grantee from the said city of New York."

Assembly bill No. 2091, entitled "An act to authorize the commissioners of the land office to grant or release to the town of Stony Point the right, title and interest of the state in and to a strip of land in the town of Stony Point, Rockland county, New York, for highway purposes."

Senate bill No. 1566, entitled "An act to amend section three hundred and forty-one of the Village law, being chapter sixty-four of the consolidated laws, in relation to notice before the accrual of certain causes of actions against villages for damages for personal injuries resulting from negligence."

Senate bill No. 1130, entitled "An act to amend the Town law, in relation to town collectors in the county of Orange."

Assembly bill No. 1396, entitled "An act to amend the Railroad law, in relation to the protection of street railroad employees in the counties of Kings and Queens."

Assembly bill No. 1380 (Senate reprint No. 1369), entitled "An act to amend the Penal law, in relation to the unauthorized use of automobiles or other motor vehicles."

Senate bill No. 896, entitled "An act to amend chapter two hundred and thirty-eight of the laws of eighteen hundred and sixty-six, in relation to the change of name of 'The German Evangelical Lutheran Church of Saint Matthew.'"

Assembly bill No. 2342, entitled "An act authorizing the Temple Israel of Harlem, a religious corporation, to increase the number of its trustees from nine to any number not exceeding fifteen."

Assembly bill No. 1771, entitled "An act to authorize the board of water and sewer commissioners of the village of Watkins to retire certain bonds issued by said board, pursuant to chapter three hundred and thirty-eight of the laws of eighteen hundred and eighty-eight, and which fall due in the years nineteen hundred and ten and nineteen hundred and twelve, respectively, by issuing new substituted bonds, to be sold to provide money to pay such bonds as mature in said years nineteen hundred and ten and nineteen hundred and twelve, as the sinking fund raised and laid aside shall be insufficient to pay at maturity."

Senate bill No. 442, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to municipal courts in the city of New York, its officers and marshals,' relative to the method of service of a summons upon a corporation."

Assembly bill No. 1264, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' relative to allowing taxable disbursements on opening defaults."

Assembly bill No. 2123, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' in relation to payment of costs of motions."

Assembly bill No. 2056, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' in relation to opening defaults, and dismissing actions or proceedings."

Senate bill No. 995, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals.'"

Assembly bill No. 1570, entitled "An act to amend section two hundred and thirty of chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its

officers and marshals,' in respect to the retrial of an action when the court has failed to render judgment on a previous trial."

Assembly bill No. 1823, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' in relation to the time within which decisions on motions shall be rendered."

Assembly bill No. 475, entitled "An act to amend chapter five hundred and eighty of the laws of nineteen hundred and two, entitled 'An act in relation to the municipal court of the city of New York, its officers and marshals,' in relation to fees for service of process."

Assembly bill No. 1029, entitled "An act to amend chapter six hundred and fifty of the laws of nineteen hundred and four, entitled 'An act to revise the charter of the city of Rome,' generally."

Assembly bill No. 996, entitled "An act to amend the Code of Civil Procedure, in regard to appeals in the city court of the city of New York."

Assembly bill No. 1505, entitled "An act to amend the Code of Civil Procedure, in relation to the service of a venire in justice's court."

Assembly bill No. 1725, entitled "An act to amend the Code of Civil Procedure, in relation to the satisfaction of judgments."

Assembly bill No. 1902, entitled "An act to amend the Code of Civil Procedure, in relation to the jurisdiction of the court of claims."

Assembly bill No. 2134, entitled "An act to amend section twenty-eight hundred and eighteen of the Code of Civil Procedure, in relation to the appointment of a successor trustee."

Assembly bill No. 2195, entitled "An act to amend the Code of Civil Procedure, in relation to proofs upon which to found service of summons by publication."

Assembly bill No. 2203, entitled "An act to amend the Code of Civil Procedure, in relation to removal of tenants and certain occupants."

Assembly bill No. 2336, entitled "An act to amend the Code of Civil Procedure, relative to personal service of summons upon certain unincorporated associations."

Assembly bill No. 1090, entitled "An act to amend the Code of Criminal Procedure, in relation to compensation of counsel in certain cases."

Assembly bill No. 1368, entitled "An act to amend the Code of Criminal Procedure, in relation to bail with a corporate surety."

Assembly bill No. 1798, entitled "An act to amend the Code of Criminal Procedure, in relation to the taking of bail, in proceedings respecting disorderly persons."

Assembly bill No. 1903, entitled "An act to amend the Code of Criminal Procedure, in relation to admission to bail of a defendant."

Assembly bill No. 1270, entitled "An act to amend the Penal law, in relation to carrying and use of dangerous weapons."

Assembly bill No. 1091, entitled "An act authorizing the city of Buffalo to audit, adjust and pay the claim of the German Rock Asphalt and Cement Company, Limited, for the repavement of Swan street in said city."

Assembly bill No. 1721, entitled "An act to amend chapter one hundred and five of the laws of eighteen hundred and ninety-one, entitled 'An act to revise the charter of the city of Buffalo,' in relation to the municipal court."

Assembly bill No. 2325, entitled "An act to repeal chapter three hundred and forty of the laws of nineteen hundred and eight, entitled 'An act to amend title six of chapter two hundred and three of the laws of nineteen hundred and seven, entitled 'An act to revise and amend the charter of the city of Newburgh, being chapter five hundred and forty-one of the laws of eighteen hundred and sixty-five, and the several acts amendatory thereof and supplemental thereto.' "

Assembly bill No. 1010, entitled "An act to amend chapter seven hundred and fifty-two of the laws of nineteen hundred and seven, entitled 'An act to revise the charter of the city of North Tonawanda,' generally."

Assembly bill No. 2112, entitled "An act to amend chapter

two hundred and twenty-five of the laws of nineteen hundred and one, entitled 'An act to incorporate the city of Oneida,' in relation to compensation of members of the police force and the members of the fire department."

Assembly bill No. 1319, entitled "An act to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled 'An act constituting the charter of the city of Rochester,' in relation to salaries."

Assembly bill No. 2197, entitled "An act to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled 'An act constituting the charter of the city of Rochester,' in relation to the municipal court."

Assembly bill No. 2201, entitled "An act to amend chapter seven hundred and fifty-five of the laws of nineteen hundred and seven, entitled 'An act constituting the charter of the city of Rochester,' in relation to claims for damages for change of grade."

Assembly bill No. 1431, entitled "An act to amend chapter six hundred and fifty of the laws of nineteen hundred and four, entitled 'An act to revise the charter of the city of Rome,' generally."

Assembly bill No. 1551 (Senate reprint No. 1335), entitled "An act to amend chapter seventy-five of the laws of nineteen hundred and six, entitled 'An act to supplement the provisions of law relating to the department of assessment and taxation of the city of Syracuse.'"

(Signed) CHARLES E. HUGHES

V

**MEMORANDA ON LEGISLATIVE BILLS
APPROVED**

V

MEMORANDA ON LEGISLATIVE BILLS APPROVED

Consolidating the General Laws of the State

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, February 17, 1909

MEMORANDUM filed with Assembly bills Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 61, constituting chapters 1 to 7, both inclusive, 11 to 39, both inclusive, 41 to 45, both inclusive, 47, 50 to 60, both inclusive, 62 and 64, of the general laws; and Assembly bill No. 62, amending the Code of Civil Procedure, and Assembly bill No. 63, amending the Code of Criminal Procedure.

APPROVED.

These bills have been passed pursuant to the recommendations of the Board of Statutory Consolidation for the purpose of suitably classifying, arranging, and consolidating the general laws of the State. By reason of the magnitude of the work various errors appear in typography, in references, in schedules of repealed laws, and there are certain inadvertent omissions and changes in the re-enacted statutes. I understand that it is proposed immediately to pass a proper amending statute which will correct these errors and supply these omissions. In view of this and of the character of these errors it has seemed advisable to sign the bills above mentioned and thus to avoid the re-printing and re-reading of this immense volume of laws and the possibility of further mistakes which might be incident to that course.

(Signed)

CHARLES E. HUGHES

**Designating the Twelfth Day of October of Each Year
as a Holiday to be Known as "Columbus Day"**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 23, 1909

MEMORANDUM filed with Senate bill No. 496, entitled

"An act to amend the General Construction law, relative to holidays, by designating the twelfth day of October of each year as a holiday, to be known as Columbus day."

APPROVED.

The question whether there shall be a public holiday to be known as Columbus day depends upon the sentiment of the people of the State.

At its last session the Legislature passed an act purporting to create such a holiday, but it was accompanied with equivocal conditions which would have made the status of the day uncertain and would have given rise to much confusion. For this reason I vetoed it. But I then stated that if it was desired to add Columbus day to the number of public holidays, the general law relating to holidays should be amended in an appropriate manner by a statute the terms of which were explicit.

The Legislature, by an overwhelming vote, has once more, in the passage of the present bill, provided for the holiday, and the bill being simple and unambiguous is approved.

(Signed) CHARLES E. HUGHES.

**In Relation to the Receiver of Taxes and Assessments
for the Town and Village of Saratoga Springs**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 3, 1909

MEMORANDUM filed with Assembly bill No. 476, entitled

“An act to amend chapter three hundred and twenty-three of the laws of eighteen hundred and seventy-two, entitled ‘An act authorizing the election of a receiver of taxes and assessments for the town and village of Saratoga Springs,’ generally.”

APPROVED.

A bill for an increase in the amount allowed for the office expenses of the receiver of taxes and assessments for the town and village of Saratoga Springs was disapproved last year upon the ground that the determination of the amount to be allowed the receiver should be left to the local authorities. The present bill so provides and accordingly is approved.

(Signed) CHARLES E. HUGHES

**In Relation to the Office of the County Clerk of the
County of Montgomery**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 5, 1909

MEMORANDUM filed with Assembly bill No. 495 (Senate reprint No. 631), entitled

“An act to amend chapter forty-one of the laws of eighteen hundred and ninety-eight, entitled ‘An act to make the office of the county clerk of the county of Montgomery a salaried office, and to provide for the conduct of said office,’ relative to fees, number of assistants and salaries.”

APPROVED.

This bill authorizes the board of supervisors to employ such additional assistants as may be needed in the office of the county clerk of Montgomery county, and places upon the board the responsibility of determining the number of such additional employees and of fixing their compensation. In other words, the matter is left, as it should be, with the local authorities.

(Signed) CHARLES E. HUGHES

**Amending the Insurance Law So as to Permit Mutual
Fire Insurance Companies or Associations of Other
States to do Business Within this State**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 5, 1909

MEMORANDUM filed with Assembly bill No. 1960, entitled

“An act to amend the Insurance law, to permit mutual fire insurance companies or associations of other states to do business within this state; to regulate the business done by them; and tax the same.”

APPROVED.

Last year I disapproved a bill which was passed for this purpose, upon two grounds,

(1) That, while the intent was to admit to this State certain companies of excellent standing, the bill was so drawn as to allow all mutual fire insurance companies to do business here, under the certificate of the Superintendent of Insurance, but without proper safeguards.

(2) That the bill contained an unconstitutional prohibition against our citizens making valid contracts of insurance in other States.

The present bill obviates these objections. It provides that no certificate of authority shall be granted to a foreign mutual fire insurance company unless it has on deposit with the Superintendent of Insurance of this State, or with the proper officer of its own State, \$200,000 in securities in which fire insurance companies of this State are required to make their minimum capital investments; nor unless, in addition to said deposit, it shall maintain a reserve fund equal to the total unearned premiums on the policies in force. The certificate of authority must be annually renewed and the Superintendent must be satisfied that the securities and investments remain secure and that the company may be safely entrusted with the continuance of its authority to do business.

The prohibition contained in the bill of last year against

concerns here obtaining valid insurance in another State, where the insuring company does not engage in insurance business in this State, has been omitted from the present bill.

The bill is therefore approved.

(Signed) CHARLES E. HUGHES

**Amending the Insurance Law Relative to Proceedings
Against and the Liquidation of Delinquent Insurance
Corporations, and Amending the Insurance Law
Generally**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 7, 1909

MEMORANDUM filed with Senate bill No. 1454, entitled

“An act to amend the Insurance law, relative to proceedings against and the liquidation of delinquent insurance corporations” ; and with

Senate bill No. 1460, entitled

“An act to amend the Insurance law generally.”

APPROVED.

The first of these bills amends the Insurance law so as to provide a method by which the Superintendent of Insurance may take possession of the property of an insurance company, where this course is necessary for the protection of its policy holders, and also that liquidation when required may be conducted in a prompt and economical manner under the supervision of the Superintendent. The waste which has resulted from protracted legal proceedings and from the heavy expenses incidental to receiverships, has been a serious abuse. While of course the authority of the courts remains unimpaired, it is highly desirable that these matters should be managed in an economical and businesslike manner, and it is believed that the powers granted by this bill to the Insurance

Department will greatly aid in bringing about this needed reform.

The principal amendments of the Insurance law provided for by Senate bill No. 1460 are as follows:

(1) It eliminates the payment by the insurance companies of the general expenses of the Department other than expenses of examinations. It would be preferable also to change the present practice of charging upon the insurance companies the expenses of their examination and to have these borne by the State. The supervision of insurance companies is in the interest of all the people and the cost of it should be defrayed like any other expense of government. The present bill, so far as it goes, is in the right direction.

(2) The bill provides for a fairer valuation of securities, by taking their investment value by amortization; that is, by the gradual extinction of the premium or discount involved in the purchase price so as to bring them to par at maturity. This method was adopted last year in connection with securities held by savings banks and will avoid apparent impairment due to temporary fluctuations in market quotations which do not fairly represent actual losses.

(3) Restrictions are provided with regard to the reinsurance of risks.

(4) The provisions regarding licenses to agents are re-enforced so as to give the Superintendent more effective control over improper practices.

(5) *Limitation of expenses.* Experience has abundantly shown that the policy of restricting the amount which can be expended in securing new business is a salutary one and should be maintained. This policy is expressed in section 97, the provisions of which are applicable both to domestic corporations and to foreign companies permitted to transact business in this State. This section in effect establishes a fund within which the expenses for first year's commissions and other specified outlays must be brought. Last year it was proposed to amend this section by enlarging the amount allowed to be expended for these purposes, and as the bill would have permitted unwarrantable outlays, I disapproved it. The fund available for first year's commissions is ample and

its enlargement would be an injury and not a benefit to the interest of policy holders.

The present bill amends section 97 simply with regard to commissions on renewal premiums and collection fees. It extends the period over which renewal commissions may be paid from nine to fourteen years, allowing renewal commissions during the additional years in an amount not exceeding five per cent annually. After fourteen years, fees for collection of renewal premiums may be allowed not exceeding three per cent, instead of two per cent as at present. The allowance of the additional renewal commissions may be conditioned upon the efficiency of the agent with respect to the business under his supervision.

This is a moderate change which I am disposed to favor. Renewal commissions are paid only upon the business which remains in force, and such rewards as aid in securing a good quality of business and its proper supervision are most easily justified. If any change is to be made in the statute, that now proposed may be allowed with the smallest risk of injury, while at the same time any possible ground of just complaint of the limitations of the statute is removed. After this, certainly no one can be heard to assert hardship, who looks at the matter from the standpoint of the policy holder.

The present bill does not change the limits which have been placed upon the amount of new business which may be taken. The importance of such a limitation is apparent.

The enormous increase of business of the large mutual companies and their vast accumulations of assets, held in a control which easily lends itself to self-perpetuation and over which the policy holders by reason of their number and distribution can only with the greatest difficulty exercise the power which rightfully belongs to them, makes it imperative that these companies should not be left to grow unrestricted. Years ago their officers, alarmed at the problems incident to their enormous expansion, themselves were disposed to limit their growth and to favor legislation for this purpose. But the proposals were abandoned and no bounds were set to the ambition of those who by virtue of their control of the savings of the people held unexampled power. It is generally recog-

nized that to permit such aggregations, constantly growing with tremendous annual increases, to remain unchecked would subject State supervision to a severe and unnecessary strain and would multiply, to the grave danger of the State, the temptations and opportunities to secure selfish political control. A halt has been called none too soon.

But the restrictions upon the business of the larger companies make it the more important that the smaller companies, while having reasonable opportunity for growth under normal conditions, should be economically managed and that this should be ensured by restrictions as to expenses which will prevent a return to the high-pressure methods of former years. Policy holders have reason to be gratified by the economies which have been effected, and by the improved standards of administration, and as I believe that the present bill will not undermine these standards but will tend to protect them from successful attack in the future, I approve it.

(6) *Standard forms of policies.* In the report of the Armstrong Committee in 1906 it was recommended that standard forms of policies, other than industrial policies, should be issued in this State by all life insurance companies doing business here. The law, as enacted, limited the requirement to domestic companies. It has been insisted that this placed our own companies at a disadvantage. The desirability of having policies in simple, concise form, without ambiguity or concealed traps, cannot be gainsaid. This result, however, may be gained by providing for standard clauses and by requiring the approval of the Superintendent as to forms of policies used in this State. The present bill provides that all policies other than industrial policies, which are issued or delivered in this State, shall contain certain specified standard provisions, and that with respect to other matters, the form of all policies of life or endowment insurance issued or delivered in this State shall be subject to the Superintendent's approval. This I believe to be a justifiable change.

For these reasons I approve the bill.

(Signed)

CHARLES E. HUGHES

**Amending the Charter of the City of Jamestown
Generally**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 15, 1909

MEMORANDUM filed with Assembly bill No. 1394 (Senate reprint No. 1088), entitled

“An act to amend the charter of the city of Jamestown generally.”

APPROVED.

I approve this bill, because of the importance of the charter amendments generally, but I do not approve of the provisions of section 65-i. This section provides that no “portion of the provisions of this charter requiring Civil Service examinations as a condition precedent to entering the employment of the city of Jamestown” shall be applicable “to the officers and help herein placed under the control of the board of hospital commissioners.” This is an attempted departure from sound policy, as exemptions from Civil Service examinations, where proper grounds therefor exist, can be made and should be made pursuant to the Civil Service law. It is a question whether the provision will accomplish its intended effect, for it would seem that the requirement of examinations depends upon the general law of the State and not upon any provision of the charter of the city. The charter should be further amended so as to eliminate this provision.

(Signed) CHARLES E. HUGHES

**Amending the Forest, Fish and Game Law, Generally
— Protection of the Forests from Fire**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 25, 1909

MEMORANDUM filed with Senate bill No. 1399, entitled

“An act to amend the Forest, Fish and Game law, generally.”

APPROVED.

It is unfortunate that this bill, having for its main object the making of suitable provisions to protect the forests from fire, should have been made the vehicle of special amendments with regard to fish and game. It was hoped that the careful revision of last year would end the practice of annual amendments for the purpose of making special exceptions with regard to this or that locality.

The bill is also objectionable in its provisions exempting men employed for fire-protection from the Civil Service law. All exemptions that are justified can readily be had, and should be had, under the provisions of the general law.

There are other provisions which may justly be criticised. But in view of the peril to which our forest possessions are constantly exposed and the importance of establishing a proper system to prevent loss by fire, it is advisable on the whole that the bill should become a law.

(Signed) CHARLES E. HUGHES

In Relation to Calendars in the Court of General Sessions in the City of New York.

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 28, 1909

MEMORANDUM filed with Assembly bill No. 1335, entitled

“An act to amend chapter four hundred and ten of the laws of eighteen hundred and eighty-two, entitled ‘An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York,’ in relation to calendars in the court of general sessions in the city of New York.”

APPROVED.

This bill was transmitted by the Assembly, through its officer, to the Mayor of the City of New York who declined to accept it on behalf of the city. It has been urged, however, that the bill is not a city bill and should not have been forwarded to the Mayor. In making this argument upon behalf of the New York County Lawyers’ Association, former Judge William J. Wallace says (in part) :

“This bill, which has the support of the New York County Lawyers’ Association, of the Association of the Bar of the City of New York, of the members of the bar generally, and of all of but one of the judges of the Court of General Sessions, has been disapproved by Mayor McClellan of the City of New York, to whom it was sent under the provisions of Article XII, Section 2, of the Constitution. * * * I am of the opinion that the subject-matter of the bill does not relate ‘to the property, affairs or government of cities’ within the meaning of Article XII, Section 2, of the Constitution, and that therefore the bill should not have been submitted to the Mayor of New York City.” * * *

“It is, of course, unquestioned and unquestionable that the Court of General Sessions for the City and County of New York is a Court created for the adjudication of criminal actions in which the people of the State of New York, acting through the District Attorney of New York County, seek the

enforcement of the criminal laws of the State. * * * The Legislature of the State has by direct enactment recognized the fact that the Court of General Sessions in the City and County of New York is a 'County Court.' Criminal Code, Section 961. And the Court of Appeals has held repeatedly that this court is but a Court of Sessions of the County of New York, and is the criminal court of the County." * * * (Cases cited.)

The Attorney-General in 1906 gave an opinion that the court in question is a county court and that its judges are county officers. I have reached the conclusion that the bill was not properly before the Mayor of the City of New York, and that I am bound to consider it upon its merits.

It is opposed upon the ground that it is unnecessary and mandatory. But it serves to confirm the powers of the court which should not be left open to controversy, and so far as its features are mandatory they are not objectionable. The bill has the support of the majority of the Judges of the Court and has received strong endorsement from the bar.

The bill is approved.

(Signed) CHARLES E. HUGHES

In Relation to the Jurisdiction of the Courts of Special Sessions of the First and Second Divisions

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 28, 1909

MEMORANDUM filed with Assembly bill No. 1614, entitled

"An act to amend section fourteen hundred and nineteen of the Greater New York charter, in relation to the jurisdiction of the courts of special sessions of the first and second divisions."

APPROVED.

This bill bears the endorsement of the Clerk of the Assembly that it was transmitted to the Mayor of the City of New York

on May 1, 1909. It was received by me, on its return, on May 17, 1909. I am informed by the Mayor that the bill was actually delivered to him on May 3, 1909. Under the opinion of the Attorney-General that the time for its return is to be computed from the date of its delivery, I have acted upon the bill.

The bill is approved.

(Signed) CHARLES E. HUGHES

Authorizing the City of New York to Grant to the New York Central and Hudson River Railroad Company Rights in Certain Park Lands, Streets, Avenues and Places in the Borough of The Bronx

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 28, 1909

MEMORANDUM filed with Assembly bill No. 2041, entitled

“An act to authorize the city of New York to grant to the New York Central and Hudson River Railroad Company, and to its lessors, rights, interests and easements in certain park lands, streets, avenues and places in the borough of the Bronx in the said city of New York.”

APPROVED.

This bill authorizes the Board of Estimate and Apportionment of the City of New York to make certain grants to the railroad company to enable it to make needed improvements at specified points on its line, and has been approved by the Mayor of the City. The compensation to be paid for the grants is to be determined by the Board of Estimate and Apportionment. With regard to the improvements desired and the advisability of the bill, the Public Service Commission of the First District advises me as follows:

“We have considered carefully the desirability of these three improvements and have concluded that the objects are meritorious in each case. The bill is permissive. Under it the

Board of Estimate can make such terms as to payments or otherwise as it sees fit. Last year a bill of somewhat the same sort was introduced that contemplated the placing of a loop at Mott Haven. This point aroused considerable opposition and there was some criticism upon it in the Commission. The Commission took no official action on it, however. Some persons have criticised the bill this year on the ground that it would allow the construction of the same loop. It is our opinion that this is not so and that the street rights referred to at Mott Haven are sufficient only for the better separation of tracks at the crossovers and the introduction of needed new crossings."

"Inasmuch as the objects of the bill are good, that the bill is permissive, and that its proper objects cannot be accomplished under existing law or the new amendments to the Rapid Transit Act, the Commission favors the bill."

The bill is approved.

(Signed) CHARLES E. HUGHES

Amending the Greater New York Charter, Relative to Vacations of Employees

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 28, 1909

MEMORANDUM filed with Assembly bill No. 1748, entitled

"An act to amend the Greater New York charter, relative to vacations of employees."

APPROVED.

This bill bears the endorsement of the Clerk of the Assembly that it was transmitted to the Mayor of the City of New York on May 1, 1909. It was received by me, on its return, on May 17, 1909. I am informed by the Mayor that the bill was actually delivered to him on May 3, 1909. Under the opinion of the Attorney-General that the time for its return is to be

computed from the date of such delivery, I have acted upon the bill.

The bill is permissive and places a matter of purely local administration in the hands of the local authorities who will be responsible for the exercise of the power conferred.

The bill is approved.

(Signed)

CHARLES E. HUGHES

**Amending the Greater New York Charter, Relative to
the Classification of Criminals and Misdemeanants**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 28, 1909

MEMORANDUM filed with Assembly bill No. 1927 (Senate reprint No. 1486), entitled

"An act to amend the Greater New York charter, relative to the classification of criminals and misdemeanants, and to cover the New York City Reformatory for Misdemeanants."

APPROVED.

This bill bears the endorsement of the Clerk of the Assembly that it was transmitted to the Mayor of the City of New York on May 1, 1909. It was received by me, on its return, on May 17, 1909. I am informed by the Mayor that the bill was actually delivered to him on May 3, 1909. Under the opinion of the Attorney-General that the time for its return is to be computed from the date of its delivery, I have acted upon the bill.

The bill is approved.

(Signed)

CHARLES E. HUGHES

Amending an Act to Revise and Consolidate the Several Acts in Relation to the City of Kingston

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 1298, entitled

“An act to amend chapter seven hundred and forty-seven of the laws of eighteen hundred and ninety-six, entitled ‘An act to revise and consolidate the several acts in relation to the city of Kingston, to revise the charter of said city, and to establish a city court therein and define its jurisdiction and powers,’ relative to the fire department.”

APPROVED.

This bill bears the endorsement of the Clerk of the Assembly that it was transmitted to the Mayor of the City of Kingston on April 17, 1909. It was received by me, on its return, on May 3, 1909. I am informed by the Mayor that the bill was actually delivered to him on April 19, 1909. Under the opinion of the Attorney-General that the time for its return is to be computed from the date of such delivery, I have acted upon the bill.

The bill is approved.

(Signed)

CHARLES E. HUGHES

Granting to the City of New York Certain Lands Under Water in Jamaica Bay and Vicinity

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 2354 (Senate reprint No. 1563), entitled

“An act to grant to the city of New York certain lands under water in Jamaica bay and vicinity.”

APPROVED.

This bill bears the endorsement of the Clerk of the Assembly that it was transmitted to the Mayor of the City of New York on May 1, 1909. It was received by me, on its return, on May 17, 1909. I am informed by the Mayor that the bill was actually delivered to him on May 3, 1909. Under the opinion of the Attorney-General that the time for its return is to be computed from the date of such delivery, I have acted upon the bill. The certificate attached to the bill does not show the assent of two-thirds of the members elected to each branch of the Legislature. But I am advised that such assent was in fact given and is shown by the record of both Houses.

This bill is designed to enable the City of New York to co-operate with the Federal government in the creation of a new harbor in and about Jamaica Bay, including the making of channels, basins, slips and other necessary adjuncts and, as the bill recites, to secure “the advancement of the commercial interests of the city, state, and nation.” For this purpose the grant is made to the City of New York of such right, title and interest as the State of New York may have in and to the land under water in Jamaica Bay and Rockaway Inlet and the tributaries thereto, as stated. The bill provides that the grant “shall become operative upon the United States government making its first appropriation for the creation of the new harbor mentioned in this act, or upon the City of New York appropriating and setting aside a sum of not less than one million dollars for the same purpose.”

It is of manifest importance that provision be made for the proper protection of the public interest in and about the waters of New York, and that the necessary and important developments of the future should not be retarded or made more expensive to the community by failure at this time to take suitable steps to safeguard the public right. It may be regretted that the bill contains any exception to its operation. But this is not a reason for its disapproval, for further delay will permit still more numerous exceptions and detract from the public opportunity which should be provided.

(Signed) CHARLES E. HUGHES

**Authorizing the Selection, Location and Appropriation
of Certain Lands in the Town of Saratoga Springs
for a State Reservation**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1167, entitled

“An act to authorize the selection, location and appropriation of certain lands in the town of Saratoga Springs, for a state reservation, and to preserve the natural mineral springs therein located, and making an appropriation therefor, and authorizing an issue of bonds to pay such appropriation.”

APPROVED.

The policy adopted by the Legislature in passing this bill is justified by the importance of preserving to the State the unique natural resources now threatened with destruction. Experience in this country and abroad has shown the advisability of governmental intervention with respect to mineral springs of established therapeutic value, which the rivalries of private enterprise can destroy but can never replace. From a proper point of view, the present condition of the natural mineral

springs at Saratoga is a matter of grave concern to the State as a whole, and the public interest will be conserved by suitable measures of protection.

The bill provides for the appointment of three Commissioners, who from time to time may select and acquire properties for the purposes of the act, and thus a State reservation is to be established. The cost is to be defrayed by an issue of bonds, and the bill provides that bonds to the extent of \$600,000, or so much as may be needed may be issued for the purpose of securing such properties, rights and easements as may be taken to secure the preservation and restoration of the springs. The Commissioners are also to have the care and regulation of the properties acquired, and are empowered to enforce measures to safeguard them and to secure such revenue as may be derived from concessions and leases or from sales of water. They are to serve without compensation for their services.

The bill is approved.

(Signed) CHARLES E. HUGHES

Incorporating the City of Lackawanna

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1424, entitled

“An act to incorporate the city of Lackawanna.”

APPROVED.

This bill provides for the establishment and government of the new city of Lackawanna.

Section 13 of the bill provides for the appointment of city officers and, among other things, requires that in the case of the two police commissioners and the two fire commissioners, respectively, one is “to be appointed from each of the two political parties casting the greatest number of votes in the

county of Erie at the last preceding state or county election." This restriction upon the power of appointment is unconstitutional and hence inoperative. It does not, however, affect the rest of the charter. Nor is it proper to assume that it affects the power of the mayor to appoint police and fire commissioners. On the contrary, it is urged with great force, that the power itself is valid and that it is the limitation only upon the power that can be considered unconstitutional and void.

The importance of providing, as soon as possible, a city government for the community in question and the urgency of this measure are generally recognized. The bill is therefore approved.

(Signed) CHARLES E. HUGHES

Extending the Time of the Watertown and Carthage Traction Company to Complete the Construction of its Road and Extensions

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 1795 (Senate reprint No. 1446), entitled

"An act to extend the time of the Watertown and Carthage Traction Company to complete the construction of its road and extensions, and put the same in operation."

APPROVED.

In view of the special circumstances of this case, and of the public importance of this enterprise, this bill, upon the recommendation of the Public Service Commission of the Second District, is approved.

(Signed) CHARLES E. HUGHES

**Authorizing the Commissioner of Police of the City of
New York to Grant a Pension to Adelina Petrosino,
Widow of Joseph Petrosino**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Senate bill No. 1316, entitled

“An act to authorize the commissioner of police of the city of New York to grant a pension to Adelina Petrosino, widow of Joseph Petrosino.”

APPROVED.

In accepting this bill for the city, the Mayor stated, among other grounds, that it was accepted

“Because of the extraordinary services rendered by the late Lieutenant Petrosino in the interests of the people which led to his assassination” ; and

“Because of the moral effect of this measure on the police force of the State and on the class of criminals that Lieutenant Petrosino was seeking to bring to justice.”

Upon these grounds, and in view of the exceptional circumstances of the case, the bill is approved.

(Signed) CHARLES E. HUGHES

Establishing the City Court of Buffalo, Defining its Powers and Jurisdiction, and Providing for its Officers

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, May 29, 1909

MEMORANDUM filed with Assembly bill No. 1870, entitled

“An act to establish the city court of Buffalo, defining its powers and jurisdiction and providing for its officers.”

APPROVED.

This bill provides for the establishment of the city court of Buffalo, to take the place of the municipal court, the police court and the courts of the justices of the peace in the city.

The new court is to be constituted on January 1, 1910. Under section 116 of the act the existing courts above mentioned are to be abolished “from and after midnight of the thirty-first day of December, nineteen hundred and nine,” and under section 118 no civil or criminal action or other proceeding “which shall be pending before any of such courts or the judges thereof at midnight on the thirty-first day of December, nineteen hundred and nine, shall abate or be anywise affected by the passage of this act.” Such proceedings are to be continued before the new court.

These clear provisions must be regarded as modifying the effect of the repealing clause at the end of the bill and leave no sound basis for the contention that it was the intention of the Legislature to deprive the existing courts of jurisdiction before the end of the year. The bill is therefore approved.

(Signed) CHARLES E. HUGHES

VI
EMERGENCY MESSAGES

VI

EMERGENCY MESSAGES

Messages certifying to the necessity of the immediate passage of specified Senate and Assembly bills, in compliance with section 15 of Article III of the Constitution, were sent to the Legislature of 1909 from time to time by Governor Hughes. The measures to which the messages applied were as follows:

April 13.—Senate bill, Introductory No. 528, Printed No. 1233, entitled "An act to amend chapter one hundred and one of the laws of eighteen hundred and eighty-one, entitled 'An act to provide for a supply of water in the village of Amsterdam, and to exempt said village from the provisions of chapter one hundred and eighty-one of the laws of eighteen hundred and seventy-five,' as amended by section eighty-five of chapter one hundred and thirty-one of the laws of eighteen hundred and eighty-five, entitled 'An act to incorporate the city of Amsterdam.'"

April 22.—Senate bill, Introductory No. 1074, Printed No. 1437, entitled "An act to amend chapter four of the laws of eighteen hundred and ninety-one, entitled 'An act to provide for rapid transit railways in cities of over one million inhabitants,' generally."

April 23.—Senate bill, Introductory No. 117, Printed No. 1496, entitled "An act to amend the Highway law, by repealing article eleven thereof and inserting a new article eleven, in relation to motor vehicles."

April 28.—Senate bill, Introductory No. 720, Printed No. 1562, entitled "An act to amend the Election law, in relation to providing a more complete means of identification of electors."

April 28.—Senate bill No. 1563, entitled "An act to grant to the city of New York certain lands under water in Jamaica bay and vicinity."

April 28.—Senate bill, Introductory No. 1112, Printed No. 1558, entitled "An act authorizing the use of the state hospital

site at Comstock for prison purposes, providing for the construction, management, equipment and maintenance of a state prison on said site and making an appropriation therefor."

April 28.—Assembly bill, Introductory No. 433, Printed No. 2390, as amended, entitled "An act making appropriations for the support of government."

April 28.—Assembly bill, Introductory No. 1768, Printed No. 2398, entitled "An act authorizing the use of the state hospital site at Comstock for prison purposes, providing for the construction, management, equipment and maintenance of a state prison on said site and making an appropriation therefor."

April 28.—Senate bill, Introductory No. 1113, Printed No. 1559, entitled "An act to establish a commission to inquire into the question of employers' liability and also into the causes and effects of unemployment in the state of New York, and making an appropriation for the expenses of said commission."

April 28.—Senate bill, Introductory No. 981, Printed No. 1553, entitled "An act to amend chapter one hundred and ninety-three of the laws of eighteen hundred and forty-six, entitled 'An act to incorporate the university of Buffalo,' and all acts amendatory thereof."

April 28.—Senate bill No. 232 (Assembly reprint No. 1117), as amended, entitled "An act to prescribe the rules for the construction of the consolidated laws and code amendments reported to the Legislature under and in pursuance to the provisions of chapter six hundred and sixty-four of the laws of nineteen hundred and four."

April 28.—Assembly bill, Introductory No. 1068, Printed No. 1736, as amended, entitled "An act to amend the Election law, in relation to the custody and filing of registers and poll books during and after registration and election in cities containing a population of one million or more."

April 29.—Assembly bill, Introductory No. 1718, Printed No. 2370, as amended, entitled "An act to amend the Highway law, by repealing article eleven thereof and inserting a new article eleven, in relation to motor vehicles."

April 29.—Senate bill, Introductory No. 324, Printed No. 344, as amended, entitled “An act to amend section six of the Land Title Registration law, chapter four hundred and forty-four of the laws of nineteen hundred and eight, in relation to the powers of an assistant deputy register.”

April 29.—Senate bill, Introductory No. 729, Printed No. 830, as amended, entitled “An act to provide for the election of a police justice in certain of the towns of this state.”

April 29.—Senate bill, Introductory No. 1114, Printed No. 1569, entitled “An act to amend the Tax law, in relation to tax-roll and collector’s warrant.”

April 29.—Assembly bill No. 2400, as amended, entitled “An act to amend the Agricultural law, entitled ‘An act in relation to agriculture, constituting chapter one of the consolidated laws’ in relation to issuing notices of or quarantines relative to infectious or contagious diseases.”

April 29.—Assembly bill, Introductory No. 1195, Printed No. 1383, as amended, entitled “An act making appropriations for the Eastern New York State Custodial Asylum, established by chapter three hundred and thirty-one of the laws of nineteen hundred and seven, to be known hereafter as ‘Letchworth Village.’”

April 29.—Assembly bill No. 1736 (Senate reprint No. 1571), entitled “An act to amend the Election law, in relation to the custody and filing of registers and poll books during and after registration and election in cities containing a population of one million or more.”

April 29.—Assembly bill, Introductory No. 1048, Printed No. 1906, as amended, entitled “An act making appropriations for certain expenses of government and supplying deficiencies in former appropriations.”

April 30.—Senate bill, Introductory No. 173, Printed No. 175, as amended, entitled “An act to authorize the acquisition of a site for, and the construction of a court house in the county of Kings, and to provide for the maintenance thereof.”

April 30.—Senate bill, Introductory No. 1110, Printed No. 1556, as amended, entitled “An act amending the Greater New York charter in relation to the removal, sale or disposal of buildings or parts of buildings and machinery acquired for a public improvement.”

VII
APPOINTMENTS

VII APPOINTMENTS

1909

Executive

SECRETARY TO THE GOVERNOR

Jan. I. Robert H. Fuller of Albany.

COUNSEL TO THE GOVERNOR

Jan. I. Carlos C. Alden of Buffalo.

MILITARY SECRETARY

Jan. I. George Curtis Treadwell of Albany.

MILITARY STAFF

Jan. I. Nelson Herrick Henry, The Adjutant-General of the State, of the grade of brigadier-general.

Jan. I. George Curtis Treadwell, Military Secretary, of the grade of major.

Aides, Detailed from the National Guard

Jan. I. Major Charles Joseph Wolf, 74th Infantry.

Jan. I. Major Oliver Benedict Bridgman, Squadron A, Cavalry.

Jan. I. Major Albert Henry Dyett, Corps of Engineers.

Jan. I. Major Elliot Bigelow, Jr., Signal Corps.

Jan. I. Major Reginald L. Foster, 12th Infantry.

Oct. 12. Major William Verbeck, 3rd Infantry, vice Captain Howard Kirk Brown, relieved.

Jan. I. Captain Charles Alonzo Simmons, 3rd Infantry.

Jan. I. Captain Charles Healy, 69th Infantry.

- Jan. 1. Captain William Royde Fearn, 71st Infantry.
- Jan. 1. Captain John Henry Ingraham, 23rd Infantry.
- Jan. 1. Captain Edwin Havens Tracy, 6th Battery,
Field Artillery.
- Jan. 1. Captain Louis William Stotesbury, 7th In-
fantry.
- Jan. 1. Captain Howard Kirk Brown, Troop D,
Cavalry.
- Jan. 1. Captain Daniel J. Hogan, 2nd Infantry.
- Jan. 1. First Lieutenant Gaius Barrett Rich, Jr., 74th
Infantry.
- Jan. 1. First Lieutenant Frederick Melvin Crossett,
Coast Artillery Corps.

Aid Detailed from the Naval Militia

- Jan. 1. Commander Robert Pierpont Forshew, 2nd
Battalion.

STATE COMPTROLLER

- Nov. 11. Clark Williams of New York city, to fill the
vacancy existing until the first day of Janu-
ary in the year 1911.

TRUSTEES OF THE NEW YORK AGRICULTURAL EXPERIMENT
STATION

- June 14. Lewis L. Morrell of Kinderhook, to succeed
Stephen H. Hammond, resigned, for a term
to expire December 3, 1909.
- June 14. Thomas B. Wilson of Halls Corners, reap-
pointed for a term to expire March 27,
1911.
- June 14. Lyman P. Haviland of Camden, reappointed
for a term to expire October 13, 1911.
- June 14. Alfred G. Lewis of Geneva, reappointed for
a term to expire June 9, 1911.
- June 14. Irving Rouse of Rochester, reappointed for
a term to expire April 2, 1912.
- June 14. Edgar G. Dusenbury of Portville, reappointed
for a term to expire April 2, 1912.

- June 14. Elihu S. Miller of Wading River, to succeed Willis G. Johnson, deceased, for a term to expire April 2, 1912.

MEMBER OF THE COMMISSION ON NEW PRISONS

- April 20. William Johnston McKay of Newburgh, to succeed Thomas W. Hynes, resigned. No stated term.

APPOINTIVE MEMBER OF THE STATE PROBATION COMMISSION

- April 21. Alphonso Trumpbour Clearwater of Kingston, to succeed Felix M. Warburg, resigned, for a term to expire July 1, 1909.

SUPERVISOR OF ACCOUNTS OF TROTTING RACE MEETINGS (District No. 1)

- Jan. 13. William F. Brush of Newburgh, to succeed William T. Loudon, term expired, for a term to expire May 10, 1913.

TRUSTEE OF THE SUPREME COURT LIBRARY AT ELMIRA

- Feb. 24. Roswell R. Moss of Elmira, to succeed George M. Diven, deceased, for a term to expire December 30, 1909.

TRUSTEE OF THE SUPREME COURT LIBRARY AT WHITE PLAINS

- Oct. 21. Nathan P. Bushnell of Peekskill, reappointed. for a term to expire December 30, 1913.

COMMISSIONERS TO EXAMINE VOTING MACHINES

- Jan. 18. John H. Barr of Syracuse, reappointed for a term to expire December 31, 1913.
Jan. 18. Harry de B. Parsons of New York city, reappointed for a term to expire December 31, 1913.
Jan. 18. Thomas Ewing, Jr., of Yonkers, reappointed for a term to expire December 31, 1913.

MEMBERS OF THE COMMISSION TO INQUIRE INTO THE QUESTION OF EMPLOYERS' LIABILITY, AND ALSO INTO THE CAUSES AND EFFECTS OF UNEMPLOYMENT IN THE STATE OF NEW YORK (Chapter 518 of the Laws of 1909)

- June 14. Henry R. Seager of New York city.
June 14. Otto M. Eidlitz of New York city.
June 14. John Mitchell of New York city.
June 14. George W. Smith of Buffalo.
June 14. Philip Titus of Kingston.
June 14. Miss Crystal Eastman of New York city.

COUNTY POSITIONS

DISTRICT ATTORNEY — BROOME COUNTY

- Jan. 1. Frederick J. Meagher of Binghamton, to fill the vacancy caused by the resignation of Roger P. Clark.

CORONER — LEWIS COUNTY

- Jan. 18. Frank M. Ringrose, M. D., of Constableville, to fill the vacancy caused by the removal of O. G. Harrington from the county.

CORONER — CHAUTAUQUA COUNTY

- Feb. 1. Bergen F. Illston, M. D., of Jamestown, to fill the vacancy caused by his failure to qualify.

CORONER — CORTLAND COUNTY

- Feb. 6. Burt Ross Parsons, M. D., of Marathon, to fill the vacancy caused by his failure to qualify.

DISTRICT ATTORNEY — SARATOGA COUNTY

- March 23. William T. Moore of Saratoga Springs, to fill the vacancy created by the resignation of Horace E. McKnight.

DISTRICT ATTORNEY — WASHINGTON COUNTY

- June 4. Erskine C. Rogers of Sandy Hill, to fill the vacancy created by the death of Robert O. Bascom.

CORONER — ORLEANS COUNTY

- June 14. Charles E. Fairman, M. D., of Lyndonville, to fill the vacancy created by the resignation of Edward Munson.

CORONER — LIVINGSTON COUNTY

- July 10. W. S. Trimmer of Livonia, to fill the vacancy created by his failure to qualify.

CORONER — ONTARIO COUNTY

- July 22. George S. Flint of Geneva, to succeed August L. Buckholtz, resigned.

Governor and Senate

MEMBER OF THE ADVISORY BOARD OF CONSULTING ENGINEERS

- Nov. 4. Joseph Ripley of Albany, to succeed William A. Brackenridge, resigned. Recess appointment requiring confirmation.

MEMBERS OF THE BOARD OF TRUSTEES OF CORNELL UNIVERSITY (Chapter 404 of the Laws of 1909)

- June 9. Frederick C. Stevens of Attica. Original appointment during recess requiring confirmation.
- June 9. Henry W. Sackett of New York city. Original appointment during recess requiring confirmation.
- June 9. Thomas B. Wilson of Halls Corners. Original appointment during recess requiring confirmation.
- June 9. Almon R. Eastman of Waterville. Original appointment during recess requiring confirmation.

- June 9. John N. Carlisle of Watertown. Original appointment during recess requiring confirmation.

TRUSTEES OF THE STATE SCHOOL OF AGRICULTURE AT MORRISVILLE

- Jan. 13. Fitch Gilbert, Jr., of Gilbertsville, reappointed for a term to expire November 16, 1910. Confirmed January 20
- Jan. 13. John A. Stewart of New York city, reappointed for a term to expire November 16, 1910. Confirmed January 20.
- Jan. 13. John H. Broad of Morrisville, reappointed for a term to expire November 16, 1912. Confirmed January 20.
- Jan. 13. John T. Roberts of Syracuse, reappointed for a term to expire November 16, 1912. Confirmed January 20.
- Jan. 13. Irving S. Sears of De Ruyter, reappointed for a term to expire November 16, 1912. Confirmed January 20.

SUPERINTENDENT OF BANKS

- Nov. 24. Orion Howard Cheney of New York city, to succeed Clark Williams, resigned. Recess appointment requiring confirmation.

COMMISSIONER OF THE STATE BOARD OF CHARITIES

- April 14. William H. Gratwick of Buffalo, reappointed for a term to expire March 23, 1917. Confirmed April 14.

FISCAL SUPERVISOR OF STATE CHARITIES

- Nov. 4. Dennis McCarthy of Syracuse, to succeed Charles M. Bissell, deceased. Recess appointment requiring confirmation.

COMMISSIONER OF HEALTH

- Jan. 6. Eugene H. Porter, M. D., of New York city, reappointed for a term to expire December 31, 1912. Confirmed January 6.

STATE COMMISSIONERS OF HIGHWAYS (Chapter 330 of the Laws of 1908)

- Jan. 6. Samuel Percy Hooker of Le Roy, designated as Chairman (original appointment), for a term to expire December 31, 1914. Confirmed January 6.
- Jan. 6. Thomas Warren Allen of New York city (original appointment), for a term to expire December 31, 1912. Confirmed January 6.
- Jan. 6. Herbert E. Cook of Denmark (original appointment), for a term to expire December 31, 1910. Not confirmed.
- Feb. 15. Robert Earl of Herkimer (original appointment), for a term to expire December 31, 1910. Confirmed February 17.

AGENT OF THE ONONDAGA INDIANS RESIDING ON THE ONONDAGA RESERVATION

- April 26. Oliver Nichols of South Onondaga, reappointed for a term to expire April 26, 1910. Confirmed April 26.

ATTORNEY OF THE SENECA NATION OF INDIANS

- April 27. Eugene A. Nash of Little Valley, for a term to expire April 15, 1912. Confirmed April 27.

SUPERINTENDENT OF INSURANCE

- Jan. 21. Frederick A. Wallis of New York City, to succeed Otto Kelsey, resigned. Nomination withdrawn.
- Feb. 8. William Horace Hotchkiss of Buffalo, to succeed Otto Kelsey, resigned, for a term to expire February 17, 1912. Confirmed February 17.

COMMISSIONER OF LABOR

- April 28. John Williams of Utica, reappointed for a term to expire December 31, 1912. Confirmed April 28.

LOAN COMMISSIONERS

Chautauqua County

- Jan. 26. Marvin Horton of Arkwright, reappointed for a term to expire January 27, 1911. Confirmed January 27.

Columbia County

- Oct. 26. Wesley Bathrick of Gallatin, to succeed Martin V. Stuppelbeen, deceased. Recess appointment requiring confirmation.

Essex County

- Feb. 17. C. Arthur Otis of Wilmington, to succeed John T. Heald, resigned, for a term to expire February 24, 1911. Confirmed February 24.
- Oct. 11. C. Arthur Otis of Wilmington, to succeed himself, failed to qualify. Recess appointment requiring confirmation.

Oneida County

- April 5. Charles E. Brown of Vienna, to succeed John R. Watkins, term expired, for a term to expire April 7, 1911. Confirmed April 7.

Ulster County

- March 15. Cornelius Dumond of Kingston, to succeed himself, failed to qualify, for a term to expire March 18, 1911. Confirmed March 18.

Wayne County

- Jan. 13. Clark Hopkins of Sodus Point, reappointed for a term to expire October 2, 1910. Confirmed January 20.

A COMMISSIONER OF THE STATE RESERVATION AT NIAGARA

- Jan. 27. William B. Howland of New York City, to succeed George Raines, deceased, for a term to expire May 11, 1913. Confirmed February 3.

COMMISSIONERS OF THE PALISADES INTERSTATE PARK

- Feb. 16. J. DuPratt White of Nyack reappointed for a term to expire February 12, 1914. Confirmed February 24.
- Feb. 16. Franklin W. Hopkins of Alpine, New Jersey, reappointed for a term to expire February 12, 1914. Confirmed February 24.
- April 26. William H. Porter of New York City, to succeed himself, failed to qualify, for a term to expire February 12, 1913. Confirmed April 27.

COMMISSIONERS OF PRISONS

- April 14. Simon P. Quick of Windsor, to succeed Roger P. Clark, resigned, for a term to expire June 21, 1909. Confirmed April 15.
- April 14. John McNamee of the borough of Brooklyn, city of New York, to succeed Thomas W. Hynes, resigned, for a term to expire June 21, 1912. Confirmed April 15.

PUBLIC SERVICE COMMISSIONERS

First District

- Feb. 8. John E. Eustis of New York City, reappointed for a term to expire February 1, 1914. Confirmed February 10.

Second District

- Feb. 8. James E. Sague of New Hamburg, reappointed for a term to expire February 1, 1914. Confirmed February 10.

SUPERINTENDENT OF PUBLIC WORKS

- Jan. 6. Frederick C. Stevens of Attica, reappointed for a term to expire December 31, 1910. Confirmed January 20.

STATE TAX COMMISSIONER

- Jan. 6. Egburt E. Woodbury of Jamestown, reappointed for a term to expire December 31, 1911. Confirmed January 6.

COMMISSIONER FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES

- July 23. Adelbert Moot of Buffalo, to succeed William H. Hotchkiss, resigned. Recess appointment requiring confirmation.

TRUSTEES OF WASHINGTON'S HEADQUARTERS

- April 26. William F. Cassedy of Newburgh, reappointed for a term to expire April 1, 1913. Confirmed April 26.
- April 26. David A. Morrison of Newburgh, reappointed for a term to expire April 1, 1913. Confirmed April 26.
- April 26. Samuel V. Schoonmaker of Newburgh, reappointed for a term to expire April 1, 1914. Confirmed April 26.
- April 26. Henry C. Hasbrouck of Newburgh, reappointed for a term to expire April 1, 1914. Confirmed April 26.

COMMISSIONERS OF THE STATE RESERVATION AT SARATOGA SPRINGS (Chapter 569 of the Laws of 1909)

- May 29. Edward M. Shepard of Brooklyn. Original appointment during recess requiring confirmation.
- May 29. Spencer Trask of Saratoga Springs. Original appointment during recess requiring confirmation.
- May 29. Frank N. Godfrey of Olean. Original appointment during recess requiring confirmation.

STATE HOSPITALS

MANAGER OF THE BINGHAMTON STATE HOSPITAL

- Jan. 13. Merritt J. Corbett of Binghamton, reappointed for a term to expire December 31, 1915. Confirmed January 20.

MANAGER OF THE BUFFALO STATE HOSPITAL

- April 26. Howard N. Witbeck of Lockport, to succeed John T. Darrison, resigned and term expired, for a term to expire December 31, 1915. Confirmed April 27.

MANAGERS OF THE CENTRAL ISLIP STATE HOSPITAL

- April 13. Maximilian Toch of New York City, reappointed for a term to expire December 31, 1915. Confirmed April 13.
- June 25. Bradish Johnson of East Islip, to succeed Henry H. Hollister, deceased. Recess appointment requiring confirmation.
- July 22. Frank S. Williams of New York City, to succeed Bradish Johnson, failed to qualify. Recess appointment requiring confirmation.
- June 25. Richard O'Gorman of New York City, to succeed Hugh Kelly, deceased. Recess appointment requiring confirmation.
- June 25. Anita Owen Floyd-Jones of Massapequa, to succeed Jeannie Floyd-Jones Robson, resigned. Recess appointment requiring confirmation.
- July 22. Elizabeth D. Morgan of Westbury, to succeed Anita Owen Floyd-Jones, failed to qualify. Recess appointment requiring confirmation.

MANAGER OF THE GOWANDA STATE HOMEOPATHIC HOSPITAL

- Feb. 8. Edwin H. Wolcott, M. D. of Rochester, reappointed for a term to expire December 31, 1915. Confirmed February 10.

MANAGER OF THE HUDSON RIVER STATE HOSPITAL

- Jan. 13. Myra H. Avery of Poughkeepsie, reappointed for a term to expire December 31, 1915. Confirmed January 20.

MANAGERS OF THE KINGS PARK STATE HOSPITAL

- April 13. John T. Rafferty of the Borough of Brooklyn, City of New York, to succeed Silas B. Dutcher, deceased, for a term to expire December 31, 1911. Confirmed April 15.
- April 28. John Rooney of the Borough of Brooklyn, City of New York, reappointed for a term to expire December 31, 1915. Confirmed April 28.

MANAGER OF THE LONG ISLAND STATE HOSPITAL

- Jan. 13. Mary G. Burtis of the Borough of Brooklyn, City of New York, reappointed for a term to expire December 31, 1915. Confirmed January 20.

MANAGER OF THE MANHATTAN STATE HOSPITAL

- April 13. Whitman V. White, M. D., of New York City, reappointed for a term to expire December 31, 1915. Confirmed April 13.

MANAGER OF THE MIDDLETOWN STATE HOMEOPATHIC HOSPITAL

- Feb. 8. Alice Larkin of New York City, reappointed for a term to expire December 31, 1915. Confirmed February 10.

MANAGERS OF THE ROCHESTER STATE HOSPITAL

- Feb. 8. Lillie Boller Werner of Rochester, reappointed for a term to expire December 31, 1915. Confirmed February 10.
- April 5. John H. Gregory of Rochester, to succeed George Raines, deceased, for a term to expire December 31, 1913. Confirmed April 7.

MANAGER OF THE ST. LAWRENCE STATE HOSPITAL

- Feb. 8. John J. Robinson, M. D., of Saranac, reappointed for a term to expire December 31, 1915. Confirmed February 10.

MANAGERS OF THE UTICA STATE HOSPITAL

- Jan. 13. Thomas F. Baker of Utica, reappointed for a term to expire December 31, 1915. Confirmed January 20.
- Jan. 13. Edward H. Coley, D. D., of Utica, to succeed William W. Bellinger, resigned, for a term to expire December 31, 1911. Confirmed January 20.
- March 15. William G. Mayer of Waterville, to succeed Thomas G. Nock, resigned, for a term to expire December 31, 1909. Confirmed March 18.

MANAGER OF THE WILLARD STATE HOSPITAL

- Feb. 8. Joseph Cameron of Hornell, reappointed for a term to expire December 31, 1915. Confirmed February 10.

CHARITABLE INSTITUTIONS

TRUSTEES OF THE NEW YORK STATE HOSPITAL FOR THE TREATMENT OF INCIPIENT PULMONARY TUBERCULOSIS (Chapter 432, Laws of 1908)

- Jan. 13. Charles Stover, M. D., of Amsterdam, reappointed for a term to expire the first Tuesday in February, 1911. Confirmed January 20.
- Jan. 13. Martin Van Buren Ives of Potsdam, reappointed for a term to expire the first Tuesday in February, 1912. Confirmed January 20.
- Jan. 13. Willis G. Macdonald, M. D., of Albany, reappointed for a term to expire the first Tuesday in February, 1913. Confirmed January 20.

MANAGERS OF THE NEW YORK STATE HOSPITAL FOR THE CARE
OF CRIPPLED AND DEFORMED CHILDREN (Chapter 149,
Laws of 1909)

- April 15. Henry W. Hardon of New York City, to
succeed George W. Thomas, resigned, for
a term to expire the first Tuesday in Feb-
ruary, 1912.
- April 15. Alice Chipman Dewey of New York City, to
succeed James Porter Fiske, resigned, for
a term to expire the first Tuesday in Feb-
ruary, 1913.
- April 15. Charles B. Hubbell of New York City, to
succeed John J. Nutt, term expired, for a
term to expire the first Tuesday in Feb-
ruary, 1914.
- April 15. Auguste M. Thiery of New York City, re-
appointed for a term to expire the first
Tuesday in February, 1915.
- April 15. Urban G. Hitchcock, M. D. of New York
city, reappointed for a term to expire the
first Tuesday in February, 1916. Con-
firmed April 15.

TRUSTEES OF THE NEW YORK STATE SCHOOL FOR THE BLIND
(Chapter 149, Laws of 1909)

- April 26. William Collins Casey of Batavia, reap-
pointed for a term to expire the first Tues-
day in February, 1915. Confirmed April 27.
- April 26. Hannah M. Humphrey of Warsaw, reap-
pointed for a term to expire the first Tues-
day in February, 1916. Confirmed April 27.

MANAGERS OF THE STATE CUSTODIAL ASYLUM FOR FEEBLE-
MINDED WOMEN (Chapter 149, Laws of 1909)

- May 13. Peter Kemper, Jr., of Newark, to succeed
George O. Baker, resigned. Recess ap-
pointment requiring confirmation.

- May 13. Henry H. Stebbins, D. D., of Rochester, to succeed Richard P. Groat, resigned. Recess appointment requiring confirmation.

MEMBERS OF THE BOARD OF MANAGERS OF LETCHWORTH VILLAGE (Chapter 446, Laws of 1909)

- June 25. Franklin B. Kirkbride of New York City. Original appointment during recess requiring confirmation.
- June 25. L. Pierce Clark, M. D., of New York City. Original appointment during recess requiring confirmation.
- June 25. Marion R. Taber of New York City. Original appointment during recess requiring confirmation.
- Aug. 18. Marion R. Taber of New York City, to succeed herself, failed to qualify. Recess appointment requiring confirmation.
- June 25. Frank A. Vanderlip of Scarborough. Original appointment during recess requiring confirmation.
- June 25. Thomas J. Colton of New York City. Original appointment during recess requiring confirmation.
- June 25. Cassity E. Mason of Tarrytown. Original appointment during recess requiring confirmation.
- June 25. Leopold Sondheim of New York City. Original appointment during recess requiring confirmation.

MANAGERS OF THE ROME STATE CUSTODIAL ASYLUM (Chapter 149, Laws of 1909)

- April 5. Cyrus J. Severance, M. D., of Mannsville, reappointed for a term to expire the first Tuesday in February, 1916. Confirmed April 7.
- July 22. Stoddard M. Stevens of Rome, to succeed George W. Adams, resigned. Recess appointment requiring confirmation.

TRUSTEES OF THE NEW YORK STATE SOLDIERS AND SAILORS' HOME (Chapter 149, Laws of 1909)

- April 26. Joseph A. Goulden of New York City, reappointed for a term to expire the first Tuesday in February, 1911. Confirmed April 27.
- April 26. John H. Swift of Union, reappointed for a term to expire the first Tuesday in February, 1912. Confirmed April 27.
- April 26. William W. Robacher of Rochester, reappointed for a term to expire the first Tuesday in February, 1913. Confirmed April 27.
- April 26. Charles A. Orr of Holland, reappointed for a term to expire the first Tuesday in February, 1914. Confirmed April 27.
- April 26. Clinton D. MacDougall of Auburn, reappointed for a term to expire the first Tuesday in February, 1915. Confirmed April 27.
- April 26. Benton McConnell of Hornell, reappointed for a term to expire the first Tuesday in February, 1916. Confirmed April 27.

MANAGERS OF THE SYRACUSE STATE INSTITUTION FOR FEEBLE-MINDED CHILDREN (Chapter 433, Laws of 1908)

- March 22. Mead Van Zile Belden of Syracuse, to succeed Henry W. Rowling, resigned, for a term to expire the first Tuesday in February, 1912. Confirmed March 24.
- March 22. Ralph S. Bowen of Syracuse, to succeed Frederick A. Lyman, resigned, for a term to expire the first Tuesday in February, 1913. Confirmed March 24.
- March 22. William W. Wiard of Syracuse, reappointed for a term to expire the first Tuesday in February, 1914. Confirmed March 24.

MANAGER OF THE NEW YORK STATE WOMAN'S RELIEF
CORPS HOME (Chapter 149, Laws of 1909)

- April 13. Ella F. B. Scott of New York City, reappointed for a term to expire the first Tuesday in February, 1916. Confirmed April 15.

REFORMATORIES

A MEMBER OF THE STATE BOARD OF MANAGERS OF RE-
FORMATORIES

- Jan. 6. Charles J. Liebmann of New York City, reappointed for a term to expire December 31, 1915. Confirmed January 20.

MANAGERS OF THE NEW YORK STATE REFORMATORY FOR
WOMEN (Chapter 433, Laws of 1908)

- Jan. 13. Harriett Munsey Griffin of White Plains, reappointed for a term to expire the first Tuesday in February, 1912. Confirmed January 20.

- Jan. 13. Florence Jaffray Harriman of Mount Kisco, reappointed for a term to expire the first Tuesday in February, 1913. Confirmed January 20.

MANAGERS OF THE NEW YORK STATE TRAINING SCHOOL FOR
GIRLS (Chapter 149, Laws of 1909)

- April 13. Loomis Burrell of Little Falls, reappointed for a term to expire the first Tuesday in February, 1916. Confirmed April 13.

- April 14. Thomas Wilson, M. D., of Hudson, to succeed George A. Lewis, resigned, for a term to expire the first Tuesday in February, 1915. Confirmed April 15.

JUDICIAL

JUSTICE OF THE SUPREME COURT—SECOND JUDICIAL DISTRICT

- Nov. 8. Harrington Putnam of the borough of Brooklyn, Kings county, to succeed William J. Gaynor, resigned.

JUSTICE OF THE SUPREME COURT — FIRST JUDICIAL DISTRICT

Dec. 3. Edward B. Whitney of New York city, to fill the vacancy caused by the resignation of Henry A. Gildersleeve.

JUSTICE OF THE SUPREME COURT — THIRD JUDICIAL DISTRICT

Dec. 27. Randall J. Le Boeuf of Albany, to fill the vacancy caused by the death of George H. Fitts.

COUNTY JUDGE AND SURROGATE — WARREN COUNTY

Nov. 20. Lyman Jenkins of Glens Falls, to fill the vacancy caused by the death of William L. Kiley.

SURROGATE — JEFFERSON COUNTY

Nov. 30. Joseph Atwell of Watertown, to fill the vacancy created by the death of Charles L. Adams.

HONORARY

LINCOLN FARM MEMORIAL

February 4. As members of a Committee to represent the State of New York in connection with the proposed Lincoln Farm Memorial:

Robert J. Collier, New York.

Andrew S. Draper, Albany.

Henry D. Emerson, Buffalo.

Rush Rhees, Rochester.

Rev. Charles L. Richmond, Albany.

NATIONAL CONFERENCE ON CRIMINAL LAW AND CRIMINOLOGY

February 6. Delegates to the National Conference on Criminal Law and Criminology, to be held in Chicago, Illinois, during the first week in June, 1909:

Henry Melville, New York.

Frederic Almy, Buffalo.

February 13

Francis C. Huntington, New York.

CONFERENCE OF THE COUNCIL OF THE AMERICAN MEDICAL
ASSOCIATION

February 8. Delegate to the Conference of the Council on Medical Education of the American Medical Association, to be held in Chicago, Illinois, April 5, 1909:

Egbert Le Fevre, M. D., New York.

CONFERENCE TO CONSIDER QUESTIONS OF TAXATION

February 3. Delegate to the conference to consider questions of the taxation by the States of vessel property, to be held in Chicago, Ill., February 5, 1909:

Egburt E. Woodbury, Jamestown.

HUDSON-FULTON CELEBRATION COMMISSION

February 1

John B. Creighton, Brooklyn.

William A. Adriance, Poughkeepsie.

Peter H. Troy, Poughkeepsie.

Charles F. Cossum, Poughkeepsie.

Cornelius F. Burns, Troy.

William Wortman, Hudson.

February 4

Andrew S. Draper, Albany.

March 1

William P. Adams, Cohoes.

Arthur L. Andrews, Albany.

Frank N. Bain, Newburgh.

Herbert Carl, Kingston.

Charles A. Elliott, Catskill.

Philip Elting, Kingston.

Hamilton Fish, Garrison.

Charles H. Gaus, Albany.

Robert J. Harding, Poughkeepsie.

W. R. Harrison, Kingston.

Gilbert D. B. Hasbrouck, Kingston.

W. C. S. Wiley, Catskill.

Frederick W. Wilson, Newburgh.

Walter L. Hutchins, Albany.

David M. Kinnear, Albany.
Henry Kohl, Newburgh.
Robert J. MacFarland, Chatham.
Frank V. Millard, Tarrytown.
Benjamin B. Odell, Jr., Newburgh.
Samuel K. Phillips, Matteawan.
John Scanlon, Cohoes.
George V. L. Spratt, Poughkeepsie.

June 30

John Henry Livingston, Tivoli.

August 18

William Pryor Letchworth, Portage.
Charles M. Dow, Jamestown.
Richard S. Barrett, Catskill.
John T. Terry, Tarrytown.

September 1

J. Irving Burns, Yonkers.
Hobart Krum, Schoharie.
William J. Duffy, Highland Falls.

September 8

William B. Jones, Albany.

September 20

William F. Gurley, Troy.
Clinton B. Herrick, Troy.
James P. Philip, Catskill.

CONFERENCE ON CLOSER TRADE RELATIONS WITH CANADA

April 2. Delegates to the conference to consider the question of Closer Trade Relations with the Dominion of Canada, and Adjacent Provinces, to be held in Detroit, Mich., April 22, 1909.

William V. Burr, Oswego.
John W. Robinson, Buffalo.
Frank Chapman, Ogdensburg.

April 6

Elliott C. McDougal, Buffalo.

April 10

Fred L. Dewey, Potsdam.

SECOND NATIONAL PEACE CONGRESS

April 22. Delegates to the Second National Peace Congress to be held in Chicago, Ill., May 3, 1909:

Andrew Carnegie, New York.
Lyman Abbott, New York.
Oscar S. Straus, New York.
Oswald Garrison Villard, New York.
Samuel T. Dutton, New York.
Hamilton Holt, New York.
Alfred J. Boulton, Brooklyn.
John H. Finley, New York.
Daniel B. Murphy, Rochester.
William I. Buchanan, Buffalo.

FIRST AMERICAN CONGRESS OF ROAD BUILDERS

May 6. Delegates to the First American Congress of Road Builders to be held in Seattle, Washington, July 4, 1909:

Frank N. Godfrey, Olean.
Charles Bulkley Hubbell, New York.
Albert R. Shattuck, New York.
Clifford Richardson, New York.
George C. Diehl, Buffalo.
Frederick H. Elliott, New York.
Emmett L. Powers, New York.

NATIONAL CONFERENCE OF CHARITIES AND CORRECTION

June 4. Delegates to the National Conference of Charities and Correction, to be held in Buffalo, N. Y., June 9, 1909:

Homer Folks, Yonkers.
Henry Moskowitz, New York.
Lillian D. Wald, New York.
William Rhinelanders Stewart, New York.
Robert W. Hebbard, New York.
Edward T. Devine, New York.
Albert Warren Ferris, M. D., New York.
Robert W. De Forest, New York.
Jane L. Armstrong, Rochester.

Frederic Almy, Buffalo.

Charles F. Howard, M. D., Buffalo.

Thomas W. Hynes, Brooklyn.

Simon W Rosendale, Albany.

Ansley Wilcox, Buffalo.

William H. Gratwick, Buffalo.

Cornelius V. Collins, Troy.

INTERNATIONAL MEDICAL CONGRESS

June 18. Delegate to the International Medical Congress, to be held in Budapest, Hungary, August 29, 1909:

William H. Tolman, Ph. D., New York City.

PAGEANT OF THE CITY OF BATH, ENGLAND

June 18. As representative of the Village of Bath, in the State of New York, in attendance upon the Pageant Illustrating the History of the Ancient City of Bath, England, to be held July 19, 1909:

Miss Eva Heinaman, Bath.

AMERICAN ASSOCIATION FOR THE STUDY OF THE FEEBLE-MINDED

June 21. Delegate to the American Association for the Study of the Feeble-Minded, to be held at Chippewa Falls, Wisconsin, June 21-24, 1909:

Charles Bernstein, M. D., Rome.

NATIONAL IRRIGATION CONGRESS

June 24. Delegates to the National Irrigation Congress, to be held in Spokane, Washington, August 9, 1909:

Olin H. Landreth, Schenectady.

James R. McKee, New York.

Albert Shaw, New York.

William F. Gurley, Troy.

Liberty Hyde Bailey, Ithaca.

July 22

F. D. Post, Spokane, Wash.

TRANS-MISSISSIPPI COMMERCIAL CONGRESS

July 22. Delegates to the Trans-Mississippi Commercial Congress, to be held in Denver, Colorado, August 16, 1909:

William J. Tully, Corning.

Alfred Hurrell, Buffalo.

INTERNATIONAL CONFERENCE ON STATE AND LOCAL TAXATION

August 18. Delegates to the International Conference on State and Local Taxation, to be held in Louisville, Kentucky, September 21, 1909:

Egburt E. Woodbury, Jamestown.

Lawson Purdy, New York City.

Edwin R. A. Seligman, New York.

NATIONAL CONSERVATION CONGRESS

August 23. Delegate to the National Conservation Congress to be held in Seattle, Washington, August 26, 1909:

Raymond A. Pearson, Ithaca.

NATIONAL GOOD ROADS CONVENTION

August 26. Delegates to the National Good Roads Convention, to be held in Cleveland, Ohio, September 21, 1909:

Samuel Percy Hooker, Le Roy.

Thomas Warren Allen, New York.

Robert Earl, Herkimer.

Frank N. Godfrey, Olean.

W. Pierrepont White, Utica.

Albert R. Shattuck, New York.

CONFERENCE ON WEIGHTS AND MEASURES

September 3. Delegate to the Conference on Weights and Measures, to be held in Washington, D. C., during the month of December, 1909:

Fritz Reichmann, Watervliet.

CONVENTION OF THE ATLANTIC DEEPER WATERWAYS ASSOCIATION

September 21. Delegates to the Atlantic Deeper Waterways Association Convention, to be held in Norfolk, Virginia, November 17, 1909:

Frederick C. Stevens, Attica.

George Clinton, Buffalo.

Charles E. Reid, New York.

FARMERS' NATIONAL CONGRESS

October 11. Delegates to the Farmers' National Congress, to be held in Raleigh, North Carolina, November 4, 1909:

Raymond A. Pearson, Ithaca.

William C. Barry, Rochester.

B. J. Case, Sodus.

E. W. Catchpole, North Rose.

Almon R. Eastman, Waterville.

Frank N. Godfrey, Olean.

Eliot B. Norris, Sodus.

Clayton C. Taylor, Lawton Station.

Thomas B. Wilson, Halls Corners.

October 16

Ira Sharp, Lowville.

R. H. Smith, Frankfort.

W. W. Ware, Batavia.

October 19

Augustus Denniston, Washingtonville.

October 25

George E. Monroe, Dryden.

Samuel Fraser, Geneseo.

CONVENTION OF THE NATIONAL SOCIETY FOR THE PROMOTION OF INDUSTRIAL EDUCATION

October 16. Delegate to the Convention of the National Society for the Promotion of Industrial Education, to be held in Milwaukee, Wisconsin, on December 2, 1909:

James F. McElroy, Albany.

NATIONAL CONGRESS OF ROAD BUILDERS

October 16. Delegates to the National Congress of Road Builders, to be held in Columbus, Ohio, October 26, 1909:

S. Percy Hooker, Le Roy.
W. Pierrepont White, Utica.
Frank N. Godfrey, Olean.

CONGRESS OF THE NATIONAL GOOD ROADS ASSOCIATION

November 20. Delegates to the Congress of the National Good Roads Association, to be held in Topeka, Kansas, December 14, 1909:

W. Pierrepont White, Utica.
Clifford Richardson, New York.
Albert R. Shattuck, New York.

NATIONAL RIVERS AND HARBORS CONGRESS

December 4. Delegates to the National Rivers and Harbors Congress, to be held in Washington, D. C., December 8, 1909:

Frederick C. Stevens, Attica.
Frank M. Williams, Oneida.
Henry W. Hill, Buffalo.
A. R. Smith, Nepara Park.
G. Waldo Smith, Bayside.
L. B. Green, Patchogue.
H. A. Reeves, Greenport.
Fred B. Dalzell, Borough of Brooklyn, New York City.
Robert J. MacFarland, Borough of Brooklyn, New York City.
William McCarroll, Borough of Brooklyn, New York City.
Frank S. Gardner, Borough of Brooklyn, New York City.
James T. Hoile, Borough of Brooklyn, New York City.
Welding Ring, Borough of Brooklyn, New York City.
William E. Cleary, Borough of Brooklyn, New York City.
Henry A. Meyer, Borough of Brooklyn, New York City.
Nelson B. Killmer, Borough of Brooklyn, New York City.
Alfred T. Holey, Borough of Brooklyn, New York City.
Lowell M. Palmer, Borough of Brooklyn, New York City.

Charles A. Schieren, Borough of Brooklyn, New York City.

Nathaniel H. Levi, Borough of Brooklyn, New York City.

Elvin S. Piper, Borough of Brooklyn, New York City.

George W. Brush, Borough of Brooklyn, New York City.

Darwin R. James, Borough of Brooklyn, New York City.

John V. Barnes, Borough of Brooklyn, New York City.

Dick S. Ramsay, Borough of Brooklyn, New York City.

Lewis Nixon, New York City.

Cornelius G. Kolf, New York City.

Calvin Tomkins, New York City.

J. J. Henry Deeves, New York City.

Frank S. Witherbee, New York City.

S. Christy Mead, New York City.

Henry B. Hebert, New York City.

Gustav H. Schwab, New York City.

Emil L. Boas, New York City.

Frank Brainard, New York City.

McDougall Hawkes, New York City.

Jacob A. Cantor, New York City.

Charles A. Schieren, Jr., New York City.

Jeremiah P. Robinson, New York City.

Charles H. Patrick, New York City.

W. G. Armstrong, New York City.

Olin J. Stephens, New York City.

Charles E. Reid, New York City.

Thomas P. Cook, New York City.

Albert Plant, New York City.

John J. D. Trenor, New York City.

Stephen Farrelly, New York City.

Edward F. Cole, New York City.

William H. Gibson, Tarrytown.

Frederick E. Lally, Port Chester.

S. D. Coykendall, Rondout.

T. Frank Niles, Chatham.

John N. Briggs, Coeymans.

J. F. Potter, Ellenville.

James Rose, Castleton.

Christian Peter, Castleton.
A. C. Cheney, Castleton.
Harrie McK. Curtis, Coxsackie.
George Bragle, Green Island.
Charles S. Rogers, Hudson.
Alfred W. Ham, Hudson.
Morgan A. Jones, Hudson.
J. A. Scott, Rensselaer.
G. P. K. Pomeroy, Stuyvesant.
C. Whitney Tillinghast, Troy.
Arthur MacArthur, Troy.
Cornelius F. Burns, Troy.
Albert J. Danahar, Watervliet.
William B. Jones, Albany.
Danforth E. Ainsworth, Albany.
Henry A. Van Alstyne, Schenectady.
William J. Roche, Troy.
Charles A. Wieting, Cobleskill.
Gilbert D. B. Hasbrouck, Kingston.
S. P. Warnick, Amsterdam.
L. W. Emerson, Warrensburg.
Walter C. Witherbee, Port Henry.
John F. O'Brien, Plattsburg.
George E. Dunham, Utica.
David S. Foster, Utica.
Luther W. Mott, Oswego.
C. Fred Boshart, Lowville.
Frederick R. Hazard, Syracuse.
Jacob G. Schurman, Ithaca.
George W. Dunn, Binghamton.
Thomas M. Osborne, Auburn.
Edward R. Taylor, Penn Yan.
George W. Aldridge, Rochester.
J. G. Cutler, Rochester.
Milo M. Acker, Hornell.
James McCall, Bath.
James S. Thomson, North Tonawanda.
George Clinton, Buffalo.

Hugh Kennedy, Buffalo.

George P. Sawyer, Buffalo.

Henry H. Persons, East Aurora.

James S. Whipple, Salamanca.

Fred S. Oakes, Cattaraugus.

John Jerome Rooney, New York City.

John Campbell, New York City.

December 7

Samuel J. Dark, Buffalo.

Charles C. Copeland, Borough of Brooklyn, New York
City.

Roland H. Wayland, Freeport.

O. S. Foster, Utica.

VIII

DESIGNATIONS

VIII

DESIGNATIONS

Court Designations

NAME	DESIGNATION
Alfred Spring....	Redesignated as an Associate Justice of the Appellate Division, Supreme Court, Fourth Department. Redesignated January 6, 1909, and December 31, 1909.
Edward B. Thomas	Designated as an Associate Justice of the Appellate Division, Supreme Court, Second Department. Designated November 8, 1909.
Pardon C. Williams	Redesignated as an Associate Justice of the Appellate Division, Supreme Court, Fourth Department. Redesignated December 31, 1909.

Designation of the Attorney-General to Represent the People at a Term of the Supreme Court and the Appellate Division of the Supreme Court in the Third Department

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 16, 1909

HONORABLE EDWARD R. O'MALLEY, *Attorney-General of the State of New York, Albany, N. Y.*

SIR.—Pursuant to the provisions of Section 62, Chapter 23 of the Laws of 1909, I hereby require that you, the Attor-

ney-General of this State, attend in person, or by one of your deputies, any term of the Supreme Court and before any judge thereof and the Appellate Division of the Supreme Court, in the third department, for the purpose of managing and conducting the appeal of said Appellate Division in the case of the People of the State of New York ex rel. George H. Goff vs. Fremont Kirk, sheriff of Tioga county, and all proceedings in connection with the taking, perfecting and conducting said appeal, and that in person or by your deputy, in the place and stead of the District Attorney of Tioga county you exercise all the powers and perform all the duties conferred upon you by said Section 62 and by this requirement made thereunder.

(Signed) CHARLES E. HUGHES

**Designation of Commissioners of the Land Office to Act
With the Forest, Fish and Game Commission**

Horace White, Lieutenant Governor, January 18, 1909.

James W. Wadsworth, Jr., Speaker of the Assembly, January 18, 1909.

**Designation of the Attorney-General to Represent the
People at a Term of the Supreme Court to be Held
in Oswego County and Conduct Proceedings Against
Frank W. White, Henry Hilton and Elden H. Cook**

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 23, 1909

HON. EDWARD R. O'MALLEY, *Attorney-General of the State
of New York, Albany, N. Y*

SIR.—Pursuant to the provisions of Section 62 of Chapter 23 of the Laws of 1909, I hereby require that you, the Attorney-General of this State, attend in person, or by one of your deputies, a term of the Supreme Court appointed to be held in

and for the county of Oswego on the first Monday of May, 1909, and at such later term or terms of said court as may be appointed or fixed, for the purpose of managing and conducting in and before said court criminal actions pending therein as follows:

(1) Two separate indictments, each accusing one Frank W. White, formerly Deputy Sheriff, of "the crime of knowingly and with intent to defraud, presenting for audit, allowance and payment, to the Board of Supervisors of Oswego County, said Board being then and there duly authorized by law to audit, allow and pay bills, claims and charges against the county of Oswego, a certain bill, claim and account containing false and fraudulent charges, items and claims in violation of Section 672 of the Penal Code of this State."

(2) Two separate indictments, each accusing one Henry Hilton, formerly Sheriff, of "the crime of knowingly and with intent to defraud of presenting for audit, allowance and payment, to the Board of Supervisors of Oswego County, said Board being then and there duly authorized by law to audit, allow and pay bills, claims and charges against the county of Oswego, a certain bill, claim and account containing false and fraudulent charges, items and claims in violation of Section 672 of the Penal Code of this State."

(3) One indictment, accusing Elden H. Cook, formerly Sheriff, of the crime of "knowingly and with intent to defraud, presenting for audit, allowance and payment, to the Board of Supervisors of Oswego County, said Board being then and there duly authorized by law to audit, allow and pay bills, claims and charges against the county of Oswego, a certain bill, claim and account containing false and fraudulent charges, items and claims in violation of Section 672 of the Penal Code of this State."

Each and all of said indictments were found by the grand jury of Oswego County, at a term of the Supreme Court, held at the city of Oswego in and for said county, and duly received and filed by the clerk thereof on the 30th day of October, 1908, and signed and endorsed by W. B. Baker, District Attorney, Justice W. M. Rogers presiding, and now

pending in the Supreme Court; and that in person or by your deputy, in the place and stead of the District Attorney of Oswego County, you exercise all the powers and perform all the duties conferred upon you by said Section 62 and by this requirement made thereunder.

(Signed) CHARLES E. HUGHES

Designation of the Attorney-General to Represent the People at a Term of the Supreme Court to be Held in Oswego County and Conduct Proceedings Against Thomas Moore

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 24, 1909

HON. EDWARD R. O'MALLEY, *Attorney-General of the State of New York, Albany, N. Y.*

SIR.—Pursuant to the provisions of Section 62 of Chapter 23 of the Laws of 1909, I hereby require that you, the Attorney-General of this State, attend in person, or by one of your deputies, a term of the Supreme Court appointed to be held in and for the county of Oswego on the first Monday of May, 1909, and at such later term or terms of said court as may be appointed or fixed, for the purpose of managing and conducting in and before said court criminal actions pending therein as follows:

Four separate indictments each accusing one Thomas Moore of "the crime of willfully misappropriating, while County Treasurer, moneys received by him as such Treasurer."

Each and all of said indictments were found by the grand jury of Oswego County, at a term of the Supreme Court, held at the city of Oswego in and for said county, and duly received and filed by the clerk thereof on the 30th day of October, 1908, and signed and endorsed by W. B. Baker, District Attorney, Justice W. M. Rogers presiding, and now pending in the Supreme Court; and that in person or by your

deputy, in the place and stead of the District Attorney of Oswego County, you exercise all the powers and perform all the duties conferred upon you by said Section 62 and by this requirement made thereunder. *

(Signed) CHARLES E. HUGHES

IX
SPECIAL TERMS OF COURT

IX
SPECIAL TERMS OF COURT
Extraordinary Trial Term

JUDGE	PLACE	ACTION TAKEN BY GOVERNOR
Louis W. Marcus..	B u f f a l o , Erie county, on July 12, 1909.	Designated on June 14, 1909, to hold extraordinary trial term.
William S. Andrews	Albany, Albany county, on Sep- tember 20, 1909.	Designated on July 23, 1909, to hold extraordinary special term.
Henry B. Coman...	B i n g h a m t o n , Broome county, on October 11, 1909.	Designated on Sep- tember 3, 1909, to hold extraor- dinary special term.
Arthur E. Suther- land.....	C a n a d a i g u a , Ontario county, October 12, 1909.	Designated on Sep- tember 3, 1909, to hold extraor- dinary special term.
Charles B. Wheeler	Borough of Man- hattan, New York, New York county, October 4, 1909.	Designated on Sep- tember 8, 1909, to hold 'extraordin- ary trial term.
Warren B. Hooker	Albany, Albany county, Janu- ary 3, 1910.	Designated on De- cember 6, 1909, to hold extraor- dinary trial term.



X
**REMOVAL PROCEEDINGS AND INVESTI-
GATIONS**

2

X

REMOVAL PROCEEDINGS AND INVESTIGATIONS

Proceedings for the Removal of the District Attorney of New York County*

Charges by a committee of stockholders of the Metropolitan Street Railway Company, William F. King, chairman, were laid before the Governor on February 25, 1908.

ORDER DISMISSING CHARGES

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 23, 1909

BEFORE THE GOVERNOR:

*In the Matter of the Charges Filed by William F. King and
Others Against William Travers Jerome, District Attor-
ney of the County of New York.*

An application for the removal of William Travers Jerome from the office of District Attorney of the county of New York having been made by William F. King, and others, representing a committee of stockholders of the Metropolitan Street Railway Company, which said application is based upon twenty-three charges; and the said William Travers Jerome having made answer thereto;

And certain of the said charges, to wit, the second, third, fourth, eighth, sixteenth, seventeenth, nineteenth, twentieth, and twenty-first thereof, relating to the former term of office of the said District Attorney, at the expiration of which he was re-elected, not being within my jurisdiction;

And the Honorable Charles Andrews having been appointed by me as Commissioner to take testimony and report upon the remaining charges; and the said Commissioner having thereafter resigned, and the Honorable Richard L. Hand having been by me appointed in his place and stead as such Commissioner;

*See Public Papers of Governor Hughes for the year 1908 for prior papers in relation to this complaint: pages 187, 188, 189, 190 and 191.

And three additional charges having been subsequently made by the áforesaid petitioners and having been referred by me to the said last named Commissioner ;

And the said Commissioner having duly taken the evidence of the parties, and having duly made his report thereon, wherein he finds that none of the said charges have been sustained, and that they should be dismissed ;

Now, after consideration of the said charges, the evidence submitted thereon and the said report, it is

ORDERED that the said charges against said William Travers Jerome be and the same hereby are dismissed.

CHARLES E. HUGHES

GOVERNOR'S OPINION

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 23, 1909

In the Matter of the Charges Filed by William F. King and Others Against William Travers Jerome, District Attorney of the County of New York.

The petition for the removal of William Travers Jerome from the office of district attorney of New York county was filed by William F. King and others representing a committee of stockholders of the Metropolitan Street Railway Company, and was based upon twenty-three charges. Of these charges, nine related to the former term of office, at the expiration of which District Attorney Jerome was re-elected by the people, and are not within my jurisdiction, to wit, the second, third, fourth, eighth, sixteenth, seventeenth, nineteenth, twentieth and twenty-first charges. The fourteen remaining charges related :

(1) To alleged neglect of duty with regard to certain cases of bribery of jurors to wit, the first charge.

(2) To certain specified matters disclosed in the course of the investigation in 1905 of the affairs of life insurance companies by the legislative committee known as the Armstrong Committee, to wit, the fifth, sixth and seventh charges.

(3) To certain matters connected with traction companies in the city of New York, to wit, the ninth, tenth, eleventh, twelfth, thirteenth and fourteenth charges.

(4) To certain criticisms of judges, to wit, the fifteenth charge.

(5) To the claim of neglect of duty with respect to the prosecution of alleged monopolies, to wit, the eighteenth charge.

(6) To the charge with respect to the retainers of a former assistant district attorney, to wit, the twenty-second charge; and finally there is

(7) The twenty-third charge, which is practically a summary of the petitioners' claims under the other charges.

In order to secure the ablest and most thorough consideration of these charges I appointed Honorable Charles Andrews, former Chief Judge of the Court of Appeals, as commissioner to take testimony and report, and when it appeared that he was unable to continue the hearings I appointed Honorable Richard L. Hand in his place.

The commissioner took the testimony which was offered by the petitioners and the district attorney, properly disregarding merely technical rules of evidence in order that all matters presented might be fully considered on their merits. The hearing was a protracted one and the evidence adduced, in testimony and documents, covers many thousands of pages and relates to a variety of transactions. During the taking of the testimony, certain matters were developed which were made the subject of additional charges against the district attorney, as follows:

(1) With respect to his interview with a certain person, who was under indictment, with regard to the retaining of counsel.

(2) With respect to his gambling in a restaurant and an alleged violation thereby of section thirty-seven of the Liquor Tax law.

(3) With respect to his alleged entrapping of a certain person into the commission of a crime.

These charges were also referred to Commissioner Hand.

The commissioner in submitting the evidence taken before

him filed an extended and well-considered report, with specific findings, in which he found that none of the charges had been proved, but that all had been disproved, and that they should be dismissed.

The fundamental principles governing proceedings of this sort, though frequently overlooked in public discussion, are entirely clear.

(1) A district attorney is not an appointive officer removable at the discretion of the appointing power. He is an elective officer, elected by the people within his county, and is not amenable to the Governor except in the manner prescribed by the constitution.

The law providing for administration by the officers whom the people have elected in their respective localities must be faithfully executed as well as any other law.

(2) The constitution provides that the Governor may remove a district attorney, giving to such officer a copy of the charges against him and an opportunity to be heard in his defense.

The Governor's exercise of this important power is not subject to review, but this does not mean that he may act arbitrarily. The Governor has no right to remove except upon charges made and sustained. Whether or not charges have been sustained must be determined by an impartial consideration of the evidence, and prejudice or prepossession should have no place.

(3) In considering charges against a district attorney, the question is not simply whether crimes have been committed or indictments have been found or convictions have been obtained, but whether the district attorney has been guilty of such misconduct or neglect of duty as to require or justify his removal from office.

(4) A public officer is entitled to the same presumptions in his favor as those which in accordance with the spirit of our institutions are raised in favor of any other person accused of wrongdoing.

The fact that he is a public officer does not deprive him of the right to be considered innocent by fair-minded people until he is proved guilty, and to be free from the imputation

of bad faith or improper motive until the evidence of it is clearly shown.

The facts disclosed by the evidence in this case are sufficiently set forth in the extended summary contained in the commissioner's report. They are too numerous, and with respect to many transactions too complicated, to permit a more succinct statement to be made than that which the commissioner has presented.

I have carefully examined the voluminous record, and I have studied the evidence which it contains with regard to the investigations and proceedings of the district attorney in the various matters to which the charges relate, and I agree with the commissioner in his conclusion that the charges have not been sustained. Nothing has been presented which furnishes any just ground for impeaching the good faith of the district attorney in connection with any of the transactions set forth, nor has anything been shown which would justify his removal from office.

I therefore dismiss the charges.

(Signed) CHARLES E. HUGHES

Proceedings for the Removal of the Sheriff of Albany County

CHARGES DISMISSED

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, June 21, 1909

BEFORE THE GOVERNOR:

In the Matter of the Charges Preferred by Charles M. Culver, Chairman, and Horatio M. Pollock, General Secretary, on Behalf of the Executive Committee of the Civic League of Albany, Against Joseph Besch, Sheriff of Albany County.

Charges having been presented by Charles M. Culver, chairman, and Horatio M. Pollock, general secretary, on be-

half of the executive committee of the Civic League of Albany, against Joseph Besch, sheriff of the county of Albany, and the said Joseph Besch having made answer thereto, and George D. Beattys, Esq., having been appointed by me commissioner to take evidence as to the truth of said charges and to make report, and the said commissioner having taken the evidence and having made a report recommending that the said charges be dismissed;

Now, after consideration of the said charges and the evidence pertinent thereto, the said charges upon the said report of the commissioner are hereby dismissed.

(Signed) CHARLES E. HUGHES

Proceedings for the Removal of the Sheriff of the County of Saratoga

CHARGES DISMISSED

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, June 21, 1909

BEFORE THE GOVERNOR:

*In the Matter of the Charges Preferred by Walter Laidlaw
Against John Bradley, Jr., Sheriff of Saratoga County.*

Charges having been presented by Walter Laidlaw against John Bradley, Jr., sheriff of the county of Saratoga, and the said John Bradley, Jr., having made answer thereto, and George W. Schurman, Esq., having been appointed by me commissioner to take evidence as to the truth of said charges and to make report, and the said commissioner having taken the evidence and having made a report recommending that the said charges be dismissed;

Now, after consideration of the said charges and the evidence pertinent thereto, the said charges upon the said report of the commissioner are hereby dismissed.

(Signed) CHARLES E. HUGHES

Proceedings for the Removal of the President of the Borough of The Bronx in the City of New York

NOTICE OF HEARING

STATE OF NEW YORK — EXECUTIVE CHAMBER

BEFORE THE GOVERNOR:

In the Matter of the Charges Against Louis F. Haffen, President of the Borough of The Bronx in the City of New York.

TO JOHN PURROY MITCHEL and ERNEST Y. GALLAHER, *Petitioners*; ARTHUR C. TRAIN, *of Counsel*.

SIRS.—You are hereby notified that upon the charges made by you against Louis F. Haffen, president of the borough of The Bronx in the city of New York, and upon his answer thereto, and upon the report of Wallace Macfarlane, Esq., commissioner appointed by me by commission dated December 15, 1908, to take evidence as to the truth of said charges, and upon the evidence taken before the said commissioner, the said Louis F. Haffen will be heard before me in his defense at the executive chamber at the Capitol, in the city of Albany, on the twenty-second day of July, 1909, at twelve o'clock noon; and that at the same time, you will be heard in support of said charges.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this sixteenth
[L. s.] day of July in the year nineteen hundred and
nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER
Secretary to the Governor

NOTICE AND SUMMONS

STATE OF NEW YORK — EXECUTIVE CHAMBER

BEFORE THE GOVERNOR:

In the Matter of the Charges Against Louis F. Haffen, President of the Borough of The Bronx in the City of New York.

TO LOUIS F. HAFFEN, *President of the Borough of The Bronx in the City of New York:*

SIR.—You are hereby notified that upon the charges made against you by John Purroy Mitchel and Ernest Y. Gallaher, commissioners of accounts of the city of New York, a copy of which has been served upon you, and upon your answer thereto, and upon the report of Wallace Macfarlane, Esq., commissioner appointed by me by commission dated December 15, 1908, to take evidence as to the truth of said charges, and upon the evidence taken before the said commissioner, you will be heard before me in your defense at the executive chamber at the Capitol, in the city of Albany, on the twenty-second day of July, 1909, at twelve o'clock, noon.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany this sixteenth
[L. S.] day of July in the year nineteen hundred and
nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER

Secretary to the Governor

ORDER OF REMOVAL FROM OFFICE

BEFORE THE GOVERNOR:

In the Matter of the Charges Against Louis F. Haffen, President of the Borough of The Bronx in the City of New York.

Charges of misconduct in office and neglect of duty having been preferred against Louis F. Haffen, president of the

borough of The Bronx of the City of New York by John Purroy Mitchel and Ernest Yale Gallaher, commissioners of accounts of the city of New York, who thereupon petitioned that the said Louis F. Haffen should be removed from said office, and a copy of said charges having been served upon and given to said Louis F. Haffen, and the said Louis F. Haffen having made answer thereto, and Honorable Wallace Macfarlane having been appointed by me commissioner to take evidence as to the truth of said charges and to report the evidence and his findings of the material facts deemed to be established in connection with said charges, together with his conclusions thereon, and the said petitioners and the said Louis F. Haffen having appeared before the said commissioner and submitted their evidence respectively in support of and in defense to said charges, and the said commissioner having duly made his report, and the said petitioners and the said Louis F. Haffen having appeared before me in person and by counsel pursuant to notice, in the executive chamber, and having been heard and having submitted their arguments with respect to said evidence and the said report, and due opportunity having been given to the said Louis F. Haffen to be heard in his defense and having been so heard;

Now, After consideration of the said charges, the said answer and the evidence presented as aforesaid, and the said report and arguments, said charges number I, III, IV, V (specifications (a) and (b)) VI, VIII, XIII, XVII, XVIII, XIX, XX and XXI are hereby dismissed;

And it further appearing to my satisfaction, after consideration of said charges and the said answer, and of the evidence presented as aforesaid and the said report and arguments, that said charges number 2, 5 (specification (c)), VII, IX, X, XI, XII, XIV, XV, XVI and XXII have been sustained as stated in my memorandum of opinion upon said charges under this date and filed herewith, and that the public interest requires it, it is hereby.

ORDERED, That the said Louis F. Haffen be and he hereby is removed from the office of president of the borough of The Bronx of the city of New York.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the city of Albany, this twenty-
[L. S.] eighth day of August in the year of our Lord one
thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

GEORGE CURTIS TREADWELL,
Acting Secretary to the Governor.

GOVERNOR'S OPINION

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, August 28, 1909

BEFORE THE GOVERNOR:

In the Matter of the Charges Against Louis F. Haffen, President of the Borough of The Bronx in the City of New York.

Louis F. Haffen has been President of the Borough of The Bronx since January 1, 1898. He was last re-elected in November, 1905, and his present term will expire on December 31, 1909. The present charges, twenty-two in number, were presented to me in November, 1908, by the Commissioners of Accounts of the City of New York, pursuant to the direction of the Mayor, after an investigation by these Commissioners of the administration of the Borough President's office. Pursuant to notice, Mr. Haffen appeared and filed his answer denying the truth of the charges. Thereupon, on December 15, 1908, I appointed Honorable Wallace Macfarlane of the city of New York as Commissioner to take evidence and to report to me his findings of the material facts deemed to be established, together with his conclusions. The Petitioners and Borough President Haffen with their respective counsel appeared before the commissioner and submitted their proofs. The hearing was an exhaustive one and upon the voluminous testimony and documentary evidence submitted, the Commissioner has made a careful and able report, setting forth the pertinent facts

and stating his conclusion that the respondent has been guilty of misconduct which should subject him to removal from office. Upon the receipt of the report, the Borough President and the Petitioners were heard before me and both have presented briefs.

The commissioner has recommended that Charges I, III, IV (except as to the wood block specification), V (specification (a)), VI, VIII, XVII, XVIII, XIX, XX and XXI be dismissed. Upon the grounds stated in his report I adopt this recommendation, and these charges are dismissed accordingly. I am also of the opinion that the evidence with respect to wood block pavement under Charges IV and V is insufficient to sustain in whole or part the conclusion that the respondent should be removed from office, and the charges relating to that matter are also dismissed.

With respect to other charges, the following facts must be deemed to be established:

That the Borough President has greatly abused his discretionary power in failing to enforce more stringently the time clauses of contracts for public improvements, and that the time statements in his certificates to the Finance Department were in many instances untrue (Charge II);

That the public funds have been wasted by loading the pay-rolls of his department with a number of employees much greater than the public work has required (Charges IX, X and XI);

That there was political jobbery in the matter of the Bronx Borough Court House; that to oblige a political friend, granite from a quarry in which the latter was interested, conducted by a company without the necessary resources, or appropriate facilities, for supplying the stone promptly and efficiently in suitable condition, was included in the specifications,—in a prominent manner indicating that it was favored—and that the selection of granite from this source contributed in large part to the delay in the construction of the building (Charge XIII);

That he has appointed and continued as architect, not only of the Court House but of other public buildings, one who

is without adequate professional qualifications for such important work. He is described by the commissioner as "primarily a politician and in respect to these public buildings to be, as petitioners claim, substantially a middleman who got the work through his political influence and employed others to supply the necessary professional qualifications." (Charge XIV);

That the Borough President was interested in the Sound View Land & Improvement Company, and that his official action in connection with the Clason's Point road was induced by his desire to increase the value of his own and his associates' holdings in this company, which had acquired a tract of forty-one acres with a frontage of 2,500 feet on the proposed road, with a view to that improvement (Charge XV);

That, as Borough President and Chairman of the local Board of Morrisania, Mr. Haffen recommended the acquisition by the city of certain property at Hunt's Point on the East River for use as a public bathing place, which was utterly unsuitable for the purpose. This wasteful and unconscionable outlay of public moneys within his borough was the result of the proceedings taken on his initiative and must be attributed in a most important degree to his official action and to his official neglect (Charge XVI).

The commissioner based his conclusion that the Borough President had been guilty of misconduct which should subject him to removal, upon the proofs submitted with respect to Charges XIII, XV and XVI. "They," as the commissioner says, "substantially charge the defendant with serious personal misconduct and if any of them has been clearly proved, a proper case for removal will be presented."

With this opinion as to the gravity of each of these three charges I entirely agree.

As to one of these charges, however,—the thirteenth—I do not find that it has been proved as laid. However reprehensible may have been the conduct of the Borough President in designating in the manner shown Buck's Harbor granite in the specifications for the court house, in order to oblige a political friend, and without proper inquiry as to the facilities for preparing the stone and securing it promptly in suit-

able condition for use in the building, the charge as presented has not been proved. The substance of the charge is that the specification "restricted competition" but, as the commissioner finds, the specification, as such, did not "restrict competition." That is not, substantially, the point of the proof. The evidence shows that there were other bidders and several bid upon other granites. The lowest and successful bidder chose Buck's Harbor granite, as evidently was desired, and the inclusion of this granite in the specifications (under the conditions shown), thus permitting its selection by the lowest bidder and entailing in that case the consequences proved, might properly have been the subject of a clearly stated charge, but can hardly be said to be suitably presented by the charge which has been served upon the respondent and he has been called upon to answer. If it were possible to give to the present charge a construction which would square it with the proof, it would not be a natural construction, and, in view of the statutory rights of the respondent in this proceeding, I should not, in my judgment, resort to it.

Charge XV presents a very serious matter and in substance has been proved.

It is urged that the building of the Clason's Point road was earnestly desired by property owners in the vicinity and that it has resulted in a very large increase in values.

But the point of the charge is that the official action of the Borough President was due to his desire to benefit himself and his associates through their interest in a realty company. If this be true, he should be removed from office. For there should be no hesitation in holding a public officer, who uses his official power for the purpose of securing pecuniary advantage, to be unworthy of his public trust.

The testimony of the Borough President before the Commissioners of Accounts is utterly irreconcilable with the proved facts. The fact that he gave such testimony necessarily weighs against his later statements. I have carefully examined the evidence, oral and documentary, which has been submitted with regard to this matter. It is unnecessary to review it. It has been sufficiently stated, and analyzed, in

the Commissioner's report. I am entirely satisfied that the Borough President was interested in the Sound View Land & Improvement Company as found by the Commissioner. And whether or not the construction of the road may be considered as actually premature, I find it impossible to escape the conclusion, taking all the facts and circumstances into consideration, that the entire official action of the respondent with regard to this improvement was induced by his purpose to secure for himself and his associates the benefits that would accrue through their interest in the property affected.

Viewed in this light, the action of the Borough President cannot be too strongly condemned. It should be understood that the promotion of public improvements for the purpose of securing private gain to officers concerned therein, will not be tolerated, and that when such treachery to public trust has been satisfactorily established, no claim of public advantage through the improvement will be permitted to obscure the dereliction of the officer or to protect him from the proper consequences of his act. It should be clearly recognized that however generous the public may be in overlooking indiscretions and mistakes of judgment, they will insist upon absolute loyalty to the public interest and will not condone the use by officers of their official authority to further their pecuniary advantage.

The acquisition by the city of the property at Hunt's Point, to which Charge XVI refers, is a highly discreditable affair. This shore property was about five acres in extent and the assessed valuation was about \$4,300. During the condemnation proceedings, the attorney for the company which owned it, purchased it from his client for about \$86,000. It was then transferred to another company and was acquired by the city at a cost of about \$247,000, the value fixed by the condemnation commissioners.

The local board of Morrisania, of which the respondent was chairman, recommended that this property be acquired by the city "for the purpose of establishing a public bathing place thereon." This recommendation the Borough President submitted to the Board of Estimate and Apportionment.

While the resolution of the latter board refers to the place as a public park, it appears that about three and one-half acres are below high water line, and only about one acre and one-half are upland. It would seem, as the Commissioner states, that "for any purpose except as a bathing place, the acquisition of this land as a public park could hardly be justified."

The utter unsuitableness of the property for a public bathing place sufficiently appears. Without describing in detail the characteristics as found by the Commissioner, it may be said that it adjoins the mouth of a huge double-trunk sewer, that nearly one-half of the frontage is rendered actually filthy with sewage, that the mean high water depth at a distance of three hundred feet from the shore is from three and one-half to four and one-half feet, and that the depth at mean high water at eight hundred feet from the shore is about seven feet. It is hard to conceive of a stretch of shore more grossly unfit for a public bathing beach than this spot.

The respondent urges that the acquisition of this property was decided upon by the Board of Estimate and Apportionment and that the amount paid therefor was determined in condemnation proceedings in the Supreme Court,—in other words, that he should not be regarded as responsible for the purchase or for the amount paid.

Certainly the Borough President should not be charged with the conduct or dereliction of other officers of the city. Yet, on the other hand, he cannot escape responsibility for his own part in the transactions because of any culpability on the part of others. The locality was within his borough; he had peculiar opportunities for knowing, and it was his duty to know, the actual conditions. He brought the recommendation before the Board of Estimate and Apportionment. In effect, his action initiated the proceeding. It cannot be supposed that it would have been instituted or continued without his participation and support.

It is further urged by the respondent that whatever he did which is material to the charge was done during his former term of office, and that hence it is not within my jurisdiction.

But I agree with the Commissioner that it cannot fairly be said that the matter has no relation to the administration of his office during his present term. The Commissioner points out that "the park was not finally purchased by the city until subsequent to November 27, 1906, when the commissioners of estimate and apportionment filed their report."

As long as there was opportunity to present the facts as to the conditions within his own borough and to save the city from this wasteful enterprise, undertaken at his own instance, he was under responsibility to make the endeavor. His duty to take suitable steps to prevent the acquisition of the property remained no less than it was at the outset. Having submitted such a recommendation, he cannot be regarded as absolved from obligation during the pendency of the proceedings resulting therefrom. His breach of duty was a continuing breach, and relates to the present as well as to the former term.

While the Commissioner, with respect to Charges IX, X and XI, states his conviction that the Borough President has been guilty of serious extravagance in loading his pay-rolls with unnecessary employees,—and I find this to be established, as already stated,—he suggests that it may be said that the proper remedy is probably political, to be applied by the electors at the polls, rather than by executive action.

With this I do not agree. In my judgment, these charges should not be disregarded, but should be considered in connection with the other matters presented. Of course, there must be serious dereliction to justify removal from office. Neglect and omissions of relative inconsequence afford no basis for the exercise of this extraordinary power. But, on the other hand, the people are entitled to efficiency in administration, and, as I said in the case of Borough President Ahearn, "If there has been maladministration in matters seriously affecting the public welfare and gross breach of official obligation, the duty of removal is clear, albeit there is no proof of speculation or personal dishonesty."

The office of Borough President is one of great importance and the character of its administration is of grave concern to

the people of the city. The Borough President, an independent elective officer, has the control of a large number of public positions and of the expenditure of enormous sums in the construction and maintenance of streets, sewers and public buildings, and in the discharge of other duties within his borough. Decent economy in the city government cannot be secured without maintaining proper standards of efficiency in this office. It was for this reason, undoubtedly, that the provision was inserted in the charter, making the borough presidents amenable to the Governor, by conferring upon the Executive the power of removal upon charges. The obvious purpose was to protect the citizens from the serious consequences of maladministration in the borough government. When the matter is before the electorate, it is for them to act according to their judgment. But it is none the less the duty of the Executive to enforce the rights of the community according to the intent of the statute when a case is properly brought before him.

There is no more fruitful cause of wastefulness in administration than the multiplication of places for ulterior purposes and gross laxity in the supervision of administrative work. Governmental concerns necessarily widen with the increase of population and there is pressing need for prudent management and the curtailment of waste. When a course of conduct reveals serious neglect of duty with respect to these matters and the subordination of the public interest to other considerations, it should not be condoned. It should be clearly understood that reckless waste of public funds, and unnecessary and extravagant outlays in connection with public work, is a serious offense.

There are other charges which I have summarized as established in whole or part. It is unnecessary to discuss them. The facts appear sufficiently in the Commissioner's report (Charges II and XIV). In addition, there remain certain charges which, under the particular circumstances shown, do not appear to be as grave as the others I have mentioned, but they as well, in my opinion, cannot properly be dismissed. There is well-founded objection to the method of charging the expense of preliminary surveys to the "Street Improve-

ment Fund," and to the character of the respondent's certificates to the engineer's payrolls, as found by the commissioner (Charge VII). And I find to be sustained the charge relating to the objectionable character of the fill along certain portions of Broadway in contravention of the specification (Charge V-c); the charge relating to the methods of the property clerk's office, which have been very careless and lacking in suitable business precautions (Charge XII); and the charge with regard to the rejection of bids for certain work because it was feared that a certain individual might not be the lowest bidder,—the said individual being continued at work on open orders in violation of the intent and spirit of the provision of the charter in regard to the letting of contracts (Charge XXII).

My conclusion is that the respondent should be removed from the office of Borough President.

(Signed) CHARLES E. HUGHES

Proceedings for the Removal of the President of the Board of Elections of the City of New York

NOTICE AND SUMMONS

STATE OF NEW YORK — EXECUTIVE CHAMBER

BEFORE THE GOVERNOR:

*In the Matter of Charges Preferred against John T. Dooling,
President of the Board of Elections of the City of New
York.*

To JOHN T. DOOLING, *President of the Board of Elections of
the City of New York:*

You are hereby notified that charges have been preferred against you by William B. Selden, praying that you be removed by the Governor from the office of President of the Board of Elections of the City of New York.

A copy of such charges is herewith served upon and given to you.

I hereby fix the eighteenth day of November, 1909, at twelve o'clock, noon, as the date on or before which your answer to said charges shall be filed with me; and you are further notified that on said eighteenth day of November, 1909, or on such later day or days as may be appointed by me, you will be afforded an opportunity of being heard in your defense.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Privy Seal of the State at the
[L. S.] Capitol in the city of Albany this ninth day of November in the year of our Lord one thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,
Secretary to the Governor.

Proceedings for the Removal of the Comptroller of the City of Schenectady

NOTICE AND SUMMONS

STATE OF NEW YORK — EXECUTIVE CHAMBER

BEFORE THE GOVERNOR:

*In the Matter of Charges Preferred against Olin S. Luffman,
Comptroller of the City of Schenectady.*

TO OLIN S. LUFFMAN, *Comptroller of the City of Schenectady:*

You are hereby notified that charges have been preferred against you by Charles Gould and Enos Madigan, praying that you be removed by the Governor from the office of Comptroller of the City of Schenectady.

A copy of said charges is herewith served upon and given to you.

You are hereby also notified that you may file an answer to such charges with me on or before Monday, the sixth day of December, 1909, and that on the sixth day of December, 1909, at two o'clock in the afternoon, in the Executive Chamber, I shall afford you an opportunity of being heard in your defense in answer to such charges.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Privy Seal of the State at
[L. S.] the Capitol in the City of Albany this twenty-ninth day of November in the year of our Lord one thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,
Secretary to the Governor.

CHARGES NOT SUSTAINED AND PETITION DISMISSED

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, December 6, 1909

*In the Matter of Charges Preferred against Olin S. Luffman,
Comptroller of the city of Schenectady.*

This is a proceeding upon petition of Charles Gould and Enos Madigan, as representatives of the Trades Assembly of the city of Schenectady, for the removal of Olin S. Luffman, Comptroller of the city of Schenectady. The petition alleges that in the performance of a certain contract to which the city of Schenectady was a party, the F. A. Weed Company permitted and required its employees and workmen to work more than eight hours in one calendar day, there being no extraordinary emergency caused by fire, flood or danger to life or property, and that such requirement so to work was a violation of section 3 of the Labor law. It is further alleged that such violation was called to the attention of the Department of Labor in accordance with sections 4 and 21

of the Labor law, and that the Department of Labor notified the city of Schenectady as provided by these sections. The charge is that notwithstanding the violation and notification, the comptroller of the city of Schenectady "with due knowledge of the premises," set forth in the petition, on August 26th, 1909, paid to the F. A. Weed Company \$351.22 under the contract mentioned, that payment being 90 per cent. of the amount due by the terms of the contract.

It is not necessary to go into the question whether there was a violation of the Labor law in the performance of the contract between the city of Schenectady and the F. A. Weed Company.

Section 4 of the Labor law provides:

"Any officer, agent or employee of this State or of a municipal corporation therein having a duty to act in the premises, who violates, evades or knowingly permits the violation or evasion of any of the provisions of this chapter, shall be guilty of malfeasance in office, and shall be suspended or removed by the authority having power to appoint or remove such officer, agent or employee; otherwise by the Governor."

It appears from the undisputed testimony before me that the respondent was not in Schenectady at the time of the payment, that he had nothing to do with the making of the payment or the issuance of the warrant therefor, and that the payment was not made pursuant to his direction or with his knowledge.

It does not appear that the respondent, the comptroller of the city of Schenectady, violated or evaded the provisions of the Labor law, or any of them.

It does not appear that the comptroller of the city of Schenectady knowingly permitted the violation or evasion of the provisions of the Labor law, or any of them.

The charge is not sustained and the petition is therefore dismissed.

(Signed) CHARLES E. HUGHES

Charges Against the President of the Borough of Brooklyn, City of New York

Charges by John Purroy Mitchel and Henry C. Buncke were laid before the Governor December 1, 1909.

CHARGES NOT ENTERTAINED

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, December 2, 1909

In the Matter of Charges against Bird S. Coler, President of the Borough of Brooklyn, City of New York, Preferred by John Purroy Mitchel and Henry C. Buncke, Commissioners of Accounts of the City of New York.

These charges were filed with me on December 1, 1909. They follow a long investigation of the Borough President's office by the Commissioners of Accounts, in the course of which testimony was taken forming a record of 4575 pages. The results of the investigation are set forth in a voluminous report of some 297 pages recently presented to the Mayor and now submitted to me with the charges. The charges which are based upon this report are twenty-four in number and range through the entire administration of the Borough President. With variety of allegation and specification he is charged "with incompetency, neglect, waste and violation of law in the administration of his office during the years 1906, 1907, 1908 and 1909."

It is clear that these charges have been presented too late to permit of their proper consideration. Under the statute and the constitutional provision to which it refers, the proceeding must be "within the term for which he" (the officer) "shall have been elected."

The Borough President's term will expire on December 31, 1909, and then my jurisdiction over this proceeding and my authority, or that of any one appointed by me, to continue it, will cease. No proceedings can be taken or decision made after that date.

The sole purpose, and the only justification for such a proceeding as this, is to provide means for the removal of the officer, if proved faithless, and to safeguard the public

interest by putting someone else in his place. A proceeding prosecuted at this time, under the conditions here disclosed, would have slight relation to the object of the statute. Where there is criminal misconduct, the criminal courts are open. Where there is any basis for civil suits on behalf of the city, the civil courts are open. The proceeding before me, under the statute, relates exclusively to removal from office.

There now remain, including Sundays and Christmas Day, twenty-nine days of the Borough President's four years' term. I have carefully examined the charges and the report, and it is certain that the proceeding could not be properly concluded within that time. It is evident that the prosecution, having presented its case in formal official report and now in deliberate charges, cannot without stultification abandon the allegations it has made. Nor can it be assumed that the defense will concede the truth of the charges. Even for the moral value of the proceeding, whatever its result, it must be conducted justly and both parties be fully heard. Else either condemnation or vindication would be of slight weight and simply give rise to further controversy. Anything short of a proper examination of the merits of the matter would be unfair either to the Borough President or to those who present the charges against him. And it cannot be dealt with on assertion or protestation, but it must be heard, if at all, upon evidence properly presented and sifted.

There is not sufficient time for this. Even if I were to hear the case personally it could not be finished by December 31st. But in view of the demands upon me during the next few weeks it will be physically impossible for me to hear it personally.

If I appoint a Commissioner, certainly the proceeding could not be concluded within the time limited. My experience in such matters leaves no doubt of this. To order such a proceeding, with its necessary expense, to be prosecuted where it is evident that it will prove abortive, would be an inexcusable waste of public moneys.

For these reasons the charges are not entertained.

(Signed) CHARLES E. HUGHES

**Proceedings for the Removal of John J. Quinn, Notary
Public of New York County***

NOTICE AND SUMMONS

STATE OF NEW YORK — EXECUTIVE CHAMBER

BEFORE THE GOVERNOR:

*In the Matter of Charges Preferred against John J. Quinn,
Notary Public, County of New York.*

TO JOHN J. QUINN, *Notary Public, County of New York:*

You are hereby notified that charges have been preferred against you by Henry A. Wise, United States Attorney for the Southern District of New York, at New York, asking that you be removed from the office of Notary Public for the county of New York. A copy of said charges, hereto annexed, is herewith served upon and given to you.

You are hereby further notified that on Monday, the third day of January, 1910, in the Executive Chamber in the city of Albany, at noon, I shall afford you an opportunity of being heard in your defense in answer to such charges.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the Privy Seal of the State at the
[L. S.] Capitol in the city of Albany this twenty-third
day of December in the year of our Lord one
thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,

Secretary to the Governor.

* Mr. Quinn was removed from his office of notary public on January 24, 1910. See Public Papers of Governor Hughes for 1910.

**Proceedings for the Removal of Abraham H. Pincus,
Notary Public of New York***

NOTICE AND SUMMONS

STATE OF NEW YORK — EXECUTIVE CHAMBER

BEFORE THE GOVERNOR:

*In the Matter of Charges Preferred against Abraham H.
Pincus, Notary Public, County of New York.*

TO ABRAHAM H. PINCUS, *Notary Public, County of New
York:*

You are hereby notified that charges have been preferred against you by Henry A. Wise, United States Attorney for the Southern District of New York, at New York, asking that you be removed from the office of Notary Public for the county of New York. A copy of said charges, hereto annexed, is herewith served upon and given to you.

You are hereby further notified that on Monday, the third day of January, 1910, in the Executive Chamber in the city of Albany, at noon, I shall afford you an opportunity of being heard in your defense in answer to such charges.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the Privy Seal of the State at the
[L. s.] Capitol in the city of Albany this twenty-third
day of December in the year of our Lord one
thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,

Secretary to the Governor.

* Mr. Pincus was removed from his office of notary public on January 24, 1910. See Public Papers of Governor Hughes for 1910.

**Proceedings for the Removal of Samuel D. Nutt, Coroner
in the Borough of Queens, City of New York**

Charges by Arnold Davidson were laid before the Governor on April 17, 1908. See Public Papers of Governor Hughes for 1908, pages 202 to 203.

CHARGES DISMISSED.

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, December 28, 1909

BEFORE THE GOVERNOR:

*In the Matter of the Charges of Arnold Davidson against
Samuel D. Nutt, Coroner in the Borough of Queens, of
the City of New York.*

Charges having been presented by Arnold Davidson against Samuel D. Nutt, coroner in the borough of Queens of the city of New York, and the said Samuel D. Nutt having made answer thereto, and the Honorable Edward R. Finch having been appointed by me Commissioner to take evidence as to the truth of said charges and to make report, and the said Commissioner having taken the evidence and made a report recommending that the said charges be dismissed;

Now, after consideration of the said charges, the evidence pertinent thereto, and the said report, the said charges are hereby dismissed.

(Signed) CHARLES E. HUGHES

**Investigation of the Department of the State Superin-
tendent of Elections for the Metropolitan Elections
District**

APPOINTMENT OF COMMISSIONER WADHAMS

STATE OF NEW YORK — EXECUTIVE CHAMBER

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye that pursuant to section 8 of the Executive law, constituting Chapter 23 of the Laws of 1909, I have appointed and by these presents do appoint

HONORABLE WILLIAM H. WADHAMS,

of the City of New York, to examine and investigate the management of the affairs of the office or department of the State Superintendent of Elections for the Metropolitan Elections District;

And I hereby give and grant unto said William H. Wadhams all and singular the powers and authorities which may be given or granted unto a person appointed by me for such purpose under authority of the statute aforesaid.

IN WITNESS WHEREOF I have subscribed my name to these presents and caused the Privy Seal of the State to be affixed hereto at the Capitol in the
[L. S.] city of Albany this twenty-first day of September in the year of our Lord one thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,

Secretary to the Governor.

REPORT OF COMMISSIONER

Mr. Wadhams made his report on April 5, 1910. In an opening paragraph of it he said: "No formal charges against the State Superintendent have been filed and referred to me for trial. The investigation has been directed to the management, and affairs of the office for the purpose of reporting the conditions existing and making such recommendations as would in the opinion of your Commissioner render the office or department more efficient." Mr. Wadhams in his report described the work of the Superintendent and expressed his opinion on the manner of its execution; and added some recommendations.

**Regarding an Alleged Nuisance Affecting Residents of
the County of Richmond**

LETTER TO THE ATTORNEY-GENERAL.

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, April 26, 1909

Hon. EDWARD R. O'MALLEY, *Attorney-General of the State
of New York, Albany, N. Y.*

DEAR SIR.—I send you herewith the report of the State Commissioner of Health made pursuant to my request upon an investigation of a complaint by residents of the county of Richmond with regard to nuisances caused by certain operations within the city of Bayonne, State of New Jersey, together with three appendices and copies of exhibits including the testimony taken before the said Commissioner. You will observe that the Commissioner after describing the situation in detail, makes the following finding:

“I hereby find and certify that the conditions existing in the county of Richmond constitute a public nuisance for the reason that certain gases, smoke, fumes and vapors, are emitted from certain plants located on Constable Hook, in the city of Bayonne, State of New Jersey, and that said gases, smoke, fumes and vapors, annoys, injures, and endangers the comfort, repose, health and safety of a considerable number of persons, and renders a considerable number of persons insecure in the use of property.

“I hereby find and certify that the discharge of these gases, smoke, fumes and vapors from certain plants located on Constable Hook, constitutes a public nuisance.”

I have considered the facts set forth in said report and the said testimony, and as the executive authority vested in me under the Public Health law for the abatement of nuisances does not extend to those which have their origin in another State, I submit the matter to you in order that such legal

proceedings may be taken as may be found advisable for the protection of the interests of our citizens.

I have the honor to remain,

Very respectfully yours,

(Signed) CHARLES E. HUGHES

FURTHER EXAMINATION ORDERED

STATE OF NEW YORK — EXECUTIVE CHAMBER

TO THE STATE COMMISSIONER OF HEALTH:

WHEREAS, A complaint was heretofore made by residents of the County of Richmond that within the State of New Jersey and City of Bayonne, at Constable Hook, in said State, there are maintained and operated certain extensive plants, furnaces, smelters, ovens and other appliances engaged in the manufacture of chemicals, the refining of oil, the roasting, reducing, smelting, manufacture and production of sulphur, copper, ores and other products, and that such manufacturing plants are constantly generating and causing to be discharged over the territory comprising Richmond County vast quantities of noisome and disagreeable smoke, fumes, effluvia, noxious and poisonous vapors and gases which endanger or injure the comfort, repose, health and safety of a considerable number of persons, citizens of Richmond County,

AND, WHEREAS, Heretofore, to wit, on the 17th day of November, in the year 1908, I required you to make an examination into the matters alleged in said complaint and into the questions affecting the security of life and health in the locality aforesaid in the County of Richmond, and to report the results thereof to me on or before the 21st day of December, 1908,

AND, WHEREAS, On the 17th day of December, 1908, you duly made your report to me of such examination and investigation,

AND, WHEREAS, After carefully considering said report and the matters therein contained and consulting with the Attorney-General of this State, it seems necessary, before taking

further action, to have a supplemental report covering the matters hereafter more specifically set forth,

NOW, THEREFORE, I, Charles E. Hughes, Governor, require you to make a further examination into the matters alleged in said complaint, and particularly into the questions as to the share, if any, of responsibility for the conditions therein set forth of the Bergen Port Chemical Company, General Chemical Company, The Columbia Oil Company, and the Pacific Coast Borax Company, so-called, and any other companies, corporations or individuals in addition to those enumerated in your first report, and to make a supplemental report containing the results thereof to me on or before the 20th day of November, 1909.

GIVEN under my hand and the Privy Seal of the State
at the Capitol in the City of Albany this four-
[L. S.] tenth day of October in the year of our Lord
one thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

ROBERT H. FULLER,
Secretary to the Governor.

Appointment of Commissioner Sandford to Investigate Matters Relating to the Preparation of the Designs and Plans for the new State Prison

STATE OF NEW YORK — EXECUTIVE CHAMBER

To all to whom these presents shall come, greeting:

KNOW YE that pursuant to section 8 of the Executive law, being chapter 18 of the Consolidated laws, I have appointed and by these presents do appoint Edward Sandford, of the city of New York, to investigate matters relating to the preparation of the designs and plans for the new State Prison to be erected pursuant to Chapter 670 of the Laws of 1906, and acts amendatory thereof, and the acts and proceedings of any commission, or any member thereof, or of any department or

officer of the State, with respect to the preparation of said designs and plans; the said Edward Sandford is hereby empowered to subpoena and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath, and to require the production of any books or papers deemed relevant or material;

And I hereby give and grant unto said Edward Sandford all and singular the powers and authorities which may be given or granted unto a person appointed by me for such purpose under authority of the statute aforesaid.

IN WITNESS WHEREOF I have subscribed my name to these Presents and caused the Great Seal of the
 [L. S.] State to be affixed hereto at the Capitol, in the city of Albany, this fourteenth day of June, in the year of our Lord one thousand nine hundred and nine.

(Signed) CHARLES E. HUGHES

Attest:

SAMUEL S. KOENIG,
 Secretary of State.

XI
PARDONS, COMMUTATIONS AND
REPRIEVES

XI

PARDONS, COMMUTATIONS AND REPRIEVES

STATE OF NEW YORK—EXECUTIVE CHAMBER

Albany, May 23, 1910

TO THE LEGISLATURE:

I have the honor to transmit a statement of the pardons, commutations and reprieves granted by me during the year 1909.

(Signed)

CHARLES E. HUGHES.

Pardons

April 17. Frank M. Wandell, Jr. Sentenced May 10, 1906; county, Kings; crime, conspiracy; term, three months; New York Penitentiary.

Earnestly recommended by Hon. Herman A. Metz, Comptroller of the City of New York, as a suitable recognition of the service rendered by Wandell and evidence furnished by him, whereby the conviction of his confederates was procured and a large number of fraudulent claims against the city for sewer damages were defeated. Mr. Metz regards Wandell's services as of great importance, a very large amount of money having thereby been saved the city and the prosecution of the business of presenting false claims for sewer damages having been destroyed. Wandell was a mere tool of his fellow conspirators, and I think that by his action he has atoned for the minor part he took in the crime.

April 28. William Burns. Sentenced March 21, 1878; county, Onondaga; crime, murder, second degree; term, life; Auburn Prison.

Commutd August 4, 1890, to twelve years, four months and four days.

Restoration to citizenship granted October 17, 1894.

The commutation was granted upon condition that Burns should forever wholly abstain from the use of intoxicating liquor. With this condition he has strictly complied ever since the day of his discharge nineteen years ago. During the whole period he has lived a sober and industrious life. He has been employed in a large manufactory in Syracuse, beginning as a laborer, and has been promoted from time to time until about a year ago when he was appointed superintendent with full charge of the manufacturing department.

Several of the most prominent residents of Syracuse have joined in a petition asking that he may now receive a full and unconditional pardon, and I am of the opinion that he is justly entitled to it.

May 12. John Dowling. Sentenced December 23, 1908; county, New York; crime, petit larceny; term, five months; New York Penitentiary.

Pardon applied for by Judge Swann who imposed the sentence. He writes that Dowling is in the last stage of consumption, that his presence at the infirmary is injurious to other patients, and that he desires to have him removed to a hospital where he can be properly cared for. He says that he was inclined to suspend sentence on account of Dowling's previous good character, and that the only reason why he sent him to the penitentiary was in order that he might have some place where his disease could be treated. Dowling has served all but eleven days of his sentence.

July 22. Frank Kochel. Sentenced November 19, 1908; county, Kings; crime, bribery; maximum term, ten years; Elmira Reformatory.

Kochel offered a policemen five dollars to save his wife from arrest for a minor offense; she had two small children and was pregnant. He has been eight months at the reformatory, a sufficient punishment in view of all the circumstances. Judge Kelly who sentenced him recommends his pardon.

July 22. Regulus Shippey. Sentenced July 7, 1908; county, New York; crime, grand larceny, first degree; minimum term, 1 year; maximum term, 6 years; Sing Sing Prison.

Shippey was convicted of grand larceny for stealing three bonds. The district attorney now reports to me that, since sentence was imposed, it has been proved that certain testimony given upon the trial and essential to the conviction, was deliberate perjury. It has been established that the three bonds in question were forged, and were not of the value charged in the indictment but were only of nominal value. The district attorney says: "While the facts as known to the court and to the district attorney at the time of conviction and sentence fully justified the verdict and the sentence imposed, the prisoner is now serving sentence for a crime, grand larceny in the first degree, which he did not commit."

The maximum sentence which the prisoner could have received for the crime of petit larceny, which is what his offense amounted to, was imprisonment in the county penitentiary for a term of one year; he has now actually served one year in State prison. Whatever may be said of the prisoner's transactions, his further incarceration cannot be justified, and the interests of justice require the exercise of clemency by the granting of a pardon.

October 18. Samuel R. Weissman. Sentenced August 12, 1909; county, New York; crime, petit larceny; term, one year, and fine, \$500; New York Penitentiary.

Granted upon the recommendation of the district attorney, with whose statement Judge Mulqueen concurs.

Beside the petit larceny conviction, Weissman has been convicted of grand larceny and has been remanded for sentence until released from the penitentiary. He is only seventeen years old, and Judge Malone and the district attorney are of the opinion that he should be sent to the Elmira Reformatory instead of to the State prison, and that this should be done at once and not after his service of a year in the penitentiary, where he will be associated with hardened criminals.

October 23. Joe Bullinski. Sentenced October 12, 1909; county, Columbia; crime, petit larceny; term, ninety days; Albany County Penitentiary.

The property stolen was of trifling value; it was the prisoner's first offense, and the Rev. F. A. Greagan of Cox-

sackie has made a strong appeal for clemency on account of the illness of the prisoner's wife caused by her husband's arrest; her condition is serious, and it is feared that if he is longer detained at the penitentiary she will not recover. Also recommended by the committing magistrate.

December 31. Isaac Bick. Sentenced December 16, 1909; county, New York; crime, violation section 482 of the penal code; term, twenty days; New York City prison.

Bick failed to comply with a court order requiring him to make certain payments toward the maintenance of his minor son who had been committed to the Jewish Protectory at Hawthorne for peddling without a license. He is very poor and unable to make the required payments. It appears that the family, since 1907, has been dependent for assistance upon the United Hebrew Charities. The president of this association writes: "In the last analysis then, it would seem that the man is now in the City Prison because the United Hebrew Charities has not provided sufficient funds to maintain his family here and his boy at Hawthorne, his chief offense apparently being that he is the father of a boy who peddled without a license. The number of days that this man still has to serve in prison is not great, but the injustice of his being there at all is so very great that I am taking the liberty of bringing the matter to your attention, in the hope that you can see your way clear to granting him a pardon."

Commutations

February 5. James P. Hennessy. Sentenced September 25, 1905; county, New York; crime, forgery, second degree; term, seven years; Sing Sing Prison.

Commuted to three years, three months and twenty-seven days.

The prisoner has rendered important assistance in exposing the misconduct of one of the prison guards, as a reward for which Superintendent Collins asks that his sentence be com-

mutated. He has served all but a year and five months of the term for which he was sentenced, deducting the statutory allowance for good conduct.

February 24. Henry Shellman. Sentenced January 12, 1906; county, New York; crime, forgery, second degree; term, five years; Sing Sing Prison, transferred to Auburn Prison.

Commutated to three years, one month and thirteen days.

Clemency is asked upon the ground that the prisoner is suffering from a disease of the eyes which will, before long, result in total blindness. He desires to return to his home in Germany, before his eye-sight is wholly gone. His term, with usual commutation, would expire in August, 1909. The commutation is granted upon condition that he leave the country for Germany within thirty days and shall not return to the United States.

April 2. Edward D. Withers. Sentenced February 25, 1909; county, St. Lawrence; crime, ~~grand larceny~~, second degree; term, one year; Clinton Prison.

Commutated to one month and eight days.

This commutation is granted on the recommendation of the county judge who tried the case, of the district attorney who prosecuted it, of Justice John M. Kellogg, and of the mayor and other leading citizens of Ogdensburg. Those who have known Withers for years, and are acquainted with all the circumstances of the case, are fully convinced that he had no criminal intent in committing the act charged against him.

April 8. George Slayer. Sentenced January 20, 1908; county, Oneida; crime, burglary, third degree, and grand larceny, second degree; term, one year and eight months; Auburn Prison.

Commutated to one year, two months and fourteen days.

This commutation is granted on account of prisoner's ill health. He is less than twenty years of age. With commutation for good behavior, he has served all but about two months of his sentence, and the prison physician reports that he is suffering from heart disease and will live but a short time.

April 30. Arlington Decker. Sentenced March 18, 1905; county, Columbia; crime, rape, second degree; term six years; Clinton Prison.

Commutated to four years, one month and four days.

The prisoner's mother, who is quite ill and is not expected to live, has asked that her son may be released before her death. Decker has been one of the trusty men in prison, his conduct has been excellent and, deducting time for good behavior, less than a month of his sentence remains unserved.

May 15. Otto De Carro. Sentenced November 23, 1908; county, New York; crime, grand larceny, second degree; term, minimum, one year and five months; maximum, two years and five months; Sing Sing Prison.

Commutated to five months and twenty-one days.

De Carro is suffering from pulmonary tuberculosis in an advanced stage. It appears that he may live three or four weeks, but cannot recover. Arrangements have been made by the State Charities Aid Association to have him removed to St. Joseph's Hospital, New York, where he will receive suitable care.

July 22. James T. Haslam. Sentenced February 18, 1908; county, New York; crime, grand larceny, second degree; term, minimum, three years and six months, maximum, four years and six months; Sing Sing Prison.

Commutated to one year, five months and five days.

After careful consideration of this case I am of the opinion that the prisoner has been sufficiently punished. Judge Malone who imposed the sentence recommends clemency, as does also the district attorney. Judge Malone says: "The prisoner pleaded guilty. * * * When sentence was imposed representations were made to me which exaggerated the extent of the prisoner's criminality. A recent and thorough investigation convinces me that this is so. I should have given the defendant a substantial allowance for his plea of guilty, if the real status of the case had been known to me."

November 11. Charles A. Seton. Sentenced April 20, 1906; county, New York; crime, grand larceny, first degree; term, eight years; Sing Sing Prison.

Commutated to three years and five months.

The Superintendent of State Prisons recommends clemency for this prisoner as a reward for information given and assistance rendered in detecting the unlawful acts of one of the prison officers. The maintenance of proper prison discipline makes it important that service such as Seton performed should be properly recognized.

December 6. Thomas F. Kennedy. Sentenced March 31, 1905; county, Erie; crime, grand larceny, first degree; term, minimum, five years and two months, maximum, nine years and two months; Auburn Prison.

Minimum term commuted to not less than four years and eight months.

This commutation is granted upon the recommendation of Justice White who imposed the sentence, and of the district attorney who prosecuted the prisoner, in consideration of the assistance rendered by him in procuring the conviction of the principal offender in the transaction. Under the sentence as commuted Kennedy will be eligible for parole at this time.

December 22. Jacob Roth alias Jacob Rouse. Sentenced February 23, 1909; county, Kings; crime, malicious mischief; term, eleven months and twenty-nine days, and fine \$60; New York Penitentiary.

Commutated to nine months and twenty-nine days.

Under the sentence as imposed the prisoner receives no statutory commutation; had it been for a year instead of eleven months and twenty-nine days, he could reduce it to ten months. Judge Dike who imposed the sentence has recommended commutation, saying that he would himself remit the fine. Roth has been sufficiently punished.

December 22. Oliver M. Dennett. Sentenced June 26, 1907; county, New York; crime, receiving stolen property, two indictments; term, first indictment, minimum, four years,

maximum, five years; second indictment, minimum, one year, maximum, four years; Sing Sing Prison.

Commuted to two years, five months and twenty-seven days.

Dennett, who was a broker in the city of New York, pleaded guilty to two indictments charging him with criminally receiving certain securities which had been stolen from the Trust Company of America by one Douglass, a clerk in its employ with whom he had been engaged in speculative transactions. At the time of the sentence it was supposed that Dennett was the principal offender in the series of transactions, and that Douglass, who pleaded guilty of grand larceny and received a sentence of imprisonment for three years, was merely his tool. The district attorney is now convinced that this was not so, that in fact the prisoner did not know until a time when the loss from speculation was heavy that the securities had been stolen. Officers and directors of the trust company are personally favorable to clemency, and after a careful consideration of all the facts I am of the opinion that Dennett has been sufficiently punished.

Reprieves

February 13. William Jones. Convicted of murder in the first degree, in the county of Nassau, and sentenced February 27, 1908, to be executed. Conviction affirmed by the Court of Appeals and execution to take place during the week beginning February 15, 1909. Respite until March 8, 1909.

On January 19, 1909, an order was made by a Justice of the Supreme Court directing the district attorney of Nassau county to show cause on January 23d why a new trial should not be granted upon newly discovered evidence. The order purported to stay all proceedings on the part of the State to execute the judgment of conviction, until the determination of the motion. Later, the hearing of the motion was set for February 20, 1909, and a further stay was granted.

Application is now made to me for a reprieve because of doubt as to the validity of the orders of stay.

Section 495 of the Code of Criminal Procedure provides as follows:

"No judge, court, or officer, other than the governor, can reprieve or suspend the execution of a defendant sentenced to the punishment of death, except where a sheriff is authorized so to do, in a case and in the manner prescribed in the following sections of this chapter. This section does not apply to a stay of proceedings upon an appeal or writ of error."

In the light of this statute and of constitutional provision, it would appear that the order purporting to stay the execution of the sentence herein is without authority of law, and the Attorney-General has this day given an opinion to this effect to the Superintendent of State Prisons. In this opinion, after a careful review of the matter, the Attorney-General says:

"It is plain from both the constitutional and statutory scheme that reprieves should be sought from the Executive, if the time before that set for execution is too short for a proper and thorough presentation to and consideration by the court of the facts upon which the new trial is sought. If the Executive is convinced that the application is without merit then the matter should end.

"Much complaint of the law's delays in criminal cases is constantly made. With the Executive in control, through his right to fix the limit of the reprieve, courts are aided in thwarting dilatory tactics. This is said without any intent whatsoever to reflect in any way upon the merits of this application for a new trial.

"And in fairness to the Justices who signed the orders I would add that I am informed that their attention was not called to the provisions of section 495 or those of the Constitution."

The records of the Executive Department show that it has been the practice for Justices of the Supreme Court who are of the opinion that time should be given for the consideration of a motion for a new trial, to recommend that the Executive grant a suitable respite for that purpose. Action upon such recommendations was taken by Governor Hill in 1887 in

the case of John M. Schuyler; by Governor Morton in 1896 in the case of Bartholomew Shea; and by Governor Roosevelt in 1899 in the case of Howard C. Benham.

It is highly important that the constitutional and statutory scheme with regard to the suspension of the execution of sentence in cases like the present should be maintained in its integrity. In view of the special circumstances of this case I have deemed it proper to grant a respite to the said William Jones from the execution of his sentence until the eighth day of March, 1909, in order that time may be allowed for the hearing of the pending motion for a new trial.

(The motion for a new trial was denied and the prisoner was executed on March 8, 1909.)

December 31. Charles Bowser. Convicted of murder in the first degree, in the county of New York, and sentenced May 17, 1909, to be executed. Conviction affirmed by the Court of Appeals, and execution to take place during the week beginning January 3, 1910. Respite until February 14, 1910.

Granted on the application of Supreme Court Justice Pound in order to afford sufficient time for the hearing and decision of a motion for a new trial now pending before him on the ground of newly discovered evidence. A further respite on the same ground was granted until February 28, 1910.

(The motion for a new trial was denied and the prisoner was executed on February 28, 1910.)

XII
MISCELLANEOUS

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Certificate of Election of Senator Elihu Root

STATE OF NEW YORK — EXECUTIVE CHAMBER

To the President of the Senate of the United States:

This is to certify that on the twentieth day of January, nineteen hundred and nine,

ELIHU ROOT

was duly chosen by the Legislature of the State of New York a Senator from said State to represent said State in the Senate of the United States for the term of six years, beginning on the fourth day of March, nineteen hundred and nine.

WITNESS: His Excellency our Governor, Charles E. Hughes, and our seal hereto affixed at Albany
[L. S.] this twenty-first day of January in the year of our Lord nineteen hundred and nine.

(Signed) CHARLES E. HUGHES

By the Governor:

SAMUEL S. KOENIG,
Secretary of State.

CERTIFICATE OF THE LEGISLATURE

Albany, N. Y., January 20, 1909

At a joint assembly of the Senate and Assembly of the State of New York, held, pursuant to law, and a concurrent resolution, on Wednesday, the twentieth day of January, 1909, at twelve o'clock noon, for the purpose of comparing the journals of the Senate and Assembly relative to nominations for the office of Senator in Congress of the United States for the term of six years from the fourth day of

March, 1909, it appearing upon such comparison, that the two houses had agreed and nominated the same person, the President of the Senate, presiding over said joint assembly, declared

HONORABLE ELIHU ROOT,

of the borough of Manhattan, in the city of New York and county of New York, to have been elected Senator in Congress of the United States for the term of six years from the fourth day of March, 1909.

IN WITNESS WHEREOF, we have hereunto set our hands and affixed the official seals of the Senate and Assembly, the day and year above written.

HORACE WHITE

President of the Senate

[L. S.]

LAFAYETTE B. GLEASON

Clerk of the Senate

J. W. WADSWORTH, JR.

Speaker of the Assembly

[L. S.]

RAY B. SMITH

Clerk of the Assembly

In Relation to an Acquisition and Appropriation by the Forest Purchasing Board

LETTER OF COMMISSIONER WHIPPLE

STATE OF NEW YORK — FOREST, FISH AND GAME COMMISSION

Albany, March 29, 1909

HON. CHARLES E. HUGHES, *Governor of the State of New York, Albany, N. Y.*

DEAR SIR.—You will doubtless remember that some time ago — on January 19, 1909 — I had an interview with you on behalf of the Forest Purchasing Board with regard to the acquisition and appropriation by said Board of Townships 2

and 3, John Brown's tract, Herkimer county, and so much of Township 4 of said tract as lies south of Beaver river, and that you then examined the forest preserve map as to the location of said townships and consented to and approved said acquisition and appropriation.

While it is not required that your consent and approval should be in writing, and I have no doubt that the consent and approval actually given may be evidenced in writing at any time, yet in order that we may have such evidence, I would request, on behalf of the Forest Purchasing Board, if you see fit to do so, that you send me a formal statement to the effect that you have consented and approved the acquisition and appropriation aforesaid, and ratifying and confirming the same. I am

Very respectfully yours

(Signed) JAMES S. WHIPPLE
Commissioner

LETTER OF THE GOVERNOR

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 29, 1909

HON. JAMES S. WHIPPLE, *Forest, Fish and Game Commissioner, Albany, N. Y.*

DEAR SIR.—I have received your letter of the 29th instant and I enclose, in accordance with your request, formal statement of my consent and approval with regard to the acquisition and appropriation of the land you mention.

Very truly yours

(Signed) CHARLES E. HUGHES

GOVERNOR'S APPROVAL

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, March 29, 1909

To the Honorable The Forest Purchasing Board, Albany, N. Y.

GENTLEMEN.—On January 19, 1909, Commissioner James S. Whipple, on behalf of the Forest Purchasing Board, had

an interview with me regarding the proposition that the said Board acquire and appropriate Townships 2 and 3, John Brown's tract, Herkimer county, and so much of Township 4 in said county as lies south of Beaver river, and I then examined the forest preserve map as to the location of said townships, and after hearing Commissioner Whipple's statement with respect thereto, I consented to and approved the acquisition and appropriation of said townships by your Board, and so informed Commissioner Whipple. In accordance with the request transmitted to me to-day on your behalf by Commissioner Whipple, I express my consent to and approval of the said acquisition and appropriation, and hereby ratify and confirm the consent and approval heretofore given, as aforesaid.

I have the honor to remain

Very respectfully yours

(Signed) CHARLES E. HUGHES

Warning Public Officers that the Election Laws Must Be Enforced

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, November 1, 1909

Governor Hughes sent to-day the following telegram:

"To the State Superintendent of Elections for the Metropolitan Elections District, 47 West 42d street, New York City:

"You are directed to take all necessary measures and precautions within your authority to see that the election to-morrow is conducted without disorder, intimidation or fraud and that the provisions of the Election law are fully enforced.

"You will be held strictly accountable for the performance of your duty.

(Signed) "CHARLES E. HUGHES"

A similar telegram was sent to the police commissioner of the city of New York. The telegram given below, addressed to the sheriff of New York county, was repeated to the sheriffs of the counties of Kings, Queens and Richmond:

" To the Sheriff of New York County, New York City, N. Y.:

" You are directed to use all means within your authority to preserve peace and order and to secure the enforcement of the law in connection with the election to-morrow. You will be held strictly accountable for the performance of your duty.

(Signed) " CHARLES E. HUGHES "

XIII
APPENDICES

XIII

APPENDIX I

COMMITTEE ON SPECULATION

Report of the Committee Appointed in 1908 to Make an Inquiry into the Facts Relating to Speculation in Securities and Commodities

Governor Hughes on December 14, 1908, requested Messrs. Horace White, Charles A. Schieren, David Leventritt, Clark Williams, John B. Clark, Willard V. King, Samuel H. Ordway, Edward D. Page and Charles Sprague Smith, all of New York city, to act as a committee for the purpose of collating facts, receiving suggestions, and making such recommendations as might seem to them fitting with regard to the following questions:

“What changes, if any, are advisable in the laws of the State bearing upon speculation in securities and commodities; or relating to the protection of investors; or with regard to the instrumentalities and organizations used in dealings in securities and commodities which are the subject of speculation?”

Acting upon this request, the committee on June 7, 1909, presented a report upon the subject outlined in the Governor's letter. Governor Hughes on June 21, 1909, expressed his thanks to the members of the committee for the service they had rendered, in the following letter:

STATE OF NEW YORK — EXECUTIVE CHAMBER

Albany, June 21, 1909

MESSRS. HORACE WHITE, *Chairman*, CHARLES A. SCHIEREN,
DAVID LEVENTRITT, CLARK WILLIAMS, JOHN B. CLARK,
WILLARD V. KING, SAMUEL H. ORDWAY, EDWARD D.
PAGE, CHARLES SPRAGUE SMITH:

DEAR SIRs.—Permit me to thank you most cordially for the distinguished service you have rendered in the inquiry and report upon speculation in securities and commodities, pursuant to the request contained in my letter of December 14, 1908. Your deliberate, expert and impartial examination of this subject, so closely related to the public welfare, has made the community your debtors, and your voluntary assumption of so laborious a task and of the expenses connected therewith, displays a public spirit which can never be forgotten by your fellow citizens. I am sure that the valuable contribution which you have made to the understanding of the matter in question will be generally appreciated.

Very sincerely yours,
(Signed) CHARLES E. HUGHES

The report of the committee follows:

REPORT OF THE COMMITTEE*

New York, June 7, 1909

HON. CHARLES E. HUGHES, *Governor, Albany, N. Y.*

DEAR SIR.—The committee appointed by you on December 14, 1908, to endeavor to ascertain

“what changes, if any, are advisable in the laws of the State bearing upon speculation in securities and commodities, or relating to the protection of investors, or with regard to the instrumentalities and organizations

* This report was transmitted by the Governor to the Legislature with his annual message on January 5, 1910.

used in dealings in securities and commodities which are the subject of speculation,"

beg leave to submit the following report:

We have invited statements from those engaged in speculation and qualified to discuss its phases; we have taken testimony offered from various sources as to its objectionable features; we have considered the experience of American States and of foreign countries in their efforts to regulate speculative operations. In our inquiry we have been aided by the officials of the various exchanges, who have expressed their views both orally and in writing, and have afforded us access to their records.

THE SUBJECT IN GENERAL

Markets have sprung into being wherever buying and selling have been conducted on a large scale. Taken in charge by regular organizations and controlled by rules, such markets become exchanges. In New York city there are two exchanges dealing in securities and seven in commodities. In addition there is a security market, without fixed membership or regular officers, known as the "Curb." The exchanges dealing in commodities are incorporated, while those dealing in securities are not.

Commodities are not held for permanent investment, but are bought and sold primarily for the purpose of commercial distribution; on the other hand, securities are primarily held for investment; but both are subjects of speculation. "Speculation consists in forecasting changes of value and buying or selling in order to take advantage of them; it may be wholly legitimate, pure gambling, or something partaking of the qualities of both. In some form it is a necessary incident of productive operations. When carried on in connection with either commodities or securities it tends to steady their prices. Where speculation is free, fluctuations in prices, otherwise violent and disastrous, ordinarily become gradual and comparatively harmless. Moreover, so far as commodities are concerned, in the absence of speculation, merchants and manufacturers would themselves be forced to carry the risks involved in changes of prices and to bear them in the

intensified condition resulting from sudden and violent fluctuations in value. Risks of this kind which merchants and manufacturers still have to assume are reduced in amount, because of the speculation prevailing; and many of these milder risks they are enabled, by "hedging," to transfer to others. For the merchant or manufacturer the speculator performs a service which has the effect of insurance.

In law, speculation becomes gambling when the trading which it involves does not lead, and is not intended to lead, to the actual passing from hand to hand of the property that is dealt in. Thus, in the recent case of *Hurd vs. Taylor* (181 N. Y., 231), the Court of Appeals of New York said:

"The law of this State as to the purchase and sale of stocks is well settled. The purchase of stocks through a broker, though the party ordering such purchase does not intend to hold the stocks as an investment, but expects the broker to carry them for him with the design on the part of the purchaser to sell again the stocks when their market value has enhanced is, however speculative, entirely legal. Equally so is a 'short sale,' where the seller has not the stock he assumes to sell, but borrows it and expects to replace it when the market value has declined. But to make such transactions legal, they must contemplate an actual purchase or an actual sale of stocks by the broker, or through him. If the intention is that the so-called broker shall pay his customer the difference between the market price at which the stocks were ordered purchased and that at which they were ordered sold, in case such fluctuation is in favor of the customer, or that in case it is against the customer, the customer shall pay the broker that difference, no purchases or sales being made, the transaction is a wager and therefore illegal. Such business is merely gambling, in which the so-called commission for purchases and sales that are never made is simply the percentage which in other gambling games is reserved in favor of the keeper of the establishment."

This is also the law respecting commodity transactions.

The rules of all the exchanges forbid gambling as defined by this opinion; but they make so easy a technical delivery of the property contracted for, that the practical effect of much speculation, in point of form legitimate, is not greatly different from that of gambling. Contracts to buy may be privately offset by contracts to sell. The offsetting may be done, in a systematic way, by clearing houses, or by "ring settlements." Where deliveries are actually made, property may be temporarily borrowed for the purpose. In these ways, speculation which has the legal traits of legitimate dealing may go on almost as freely as mere wagering, and may have most of the pecuniary and immoral effects of gambling on a large scale.

A real distinction exists between speculation which is carried on by persons of means and experience, and based on an intelligent forecast, and that which is carried on by persons without these qualifications. The former is closely connected with regular business. While not unaccompanied by waste and loss, this speculation accomplishes an amount of good which offsets much of its cost. The latter does but a small amount of good and an almost incalculable amount of evil. In its nature it is in the same class with gambling upon the race-track or at the roulette table, but is practised on a vastly larger scale. Its ramifications extend to all parts of the country. It involves a practical certainty of loss to those who engage in it. A continuous stream of wealth, taken from the actual capital of innumerable persons of relatively small means, swells the income of brokers and operators dependent on this class of business; and in so far as it is consumed like most income, it represents a waste of capital. The total amount of this waste is rudely indicated by the obvious cost of the vast mechanism of brokerage and by manipulators' gains, of both of which it is a large constituent element. But for a continuous influx of new customers, replacing those whose losses force them out of the "street," this costly mechanism of speculation could not be maintained on anything like its present scale.

The Problem to be Solved

The problem, wherever speculation is strongly rooted, is to eliminate that which is wasteful and morally destructive, while retaining and allowing free play to that which is beneficial. The difficulty in the solution of the problem lies in the practical impossibility of distinguishing what is virtually gambling from legitimate speculation. The most fruitful policy will be found in measures which will lessen speculation by persons not qualified to engage in it. In carrying out such a policy exchanges can accomplish more than legislatures. In connection with our reports on the different exchanges, as well as on the field of investment and speculation which lies outside of the exchanges, we shall make recommendations directed to the removal of various evils now existing and to the reduction of the volume of speculation of the gambling type.

THE NEW YORK STOCK EXCHANGE

The New York Stock Exchange is a voluntary association, limited to 1,100 members, of whom about 700 are active, some of them residents of other cities. Memberships are sold for about \$80,000. The Exchange as such does no business, merely providing facilities to members and regulating their conduct. The governing power is in an elected committee of forty members and is plenary in scope. The business transacted on the floor is the purchase and sale of stocks and bonds of corporations and governments. Practically all transactions must be completed by delivery and payment on the following day.

The mechanism of the Exchange, provided by its constitution and rules, is the evolution of more than a century. An organization of stock brokers existed here in 1792, acquiring more definite form in 1817. It seems certain that for a long period the members were brokers or agents only; at the present time many are principals as well as agents, trading for themselves as well as for their customers. A number of prominent capitalists hold memberships merely for the purpose of availing themselves of the reduced commission charge which the rules authorize between members.

The volume of transactions indicates that the Exchange is to-day probably the most important financial institution in the world. In the past decade the average annual sales of shares have been 196,500,000 at prices involving an annual average turnover of nearly \$15,500,000,000; bond transactions averaged about \$800,000,000. This enormous business affects the financial and credit interests of the country in so large a measure that its proper regulation is a matter of transcendent importance. While radical changes in the mechanism, which is now so nicely adjusted that the transactions are carried on with the minimum of friction, might prove disastrous to the whole country, nevertheless measures should be adopted to correct existing abuses.

Patrons of the Exchange

The patrons of the Exchange may be divided into the following groups:

(1.) Investors, who personally examine the facts relating to the value of securities or act on the advice of reputable and experienced financiers, and pay in full for what they buy.

(2.) Manipulators, whose connection with corporations issuing or controlling particular securities enables them under certain circumstances to move the prices up or down, and who are thus in some degree protected from dangers encountered by other speculators.

(3.) Floor traders, who keenly study the markets and the general conditions of business, and acquire early information concerning the changes which affect the values of securities. From their familiarity with the technique of dealings on the Exchange, and ability to act in concert with others, and thus manipulate values, they are supposed to have special advantages over other traders.

(4.) Outside operators having capital, experience, and knowledge of the general conditions of business. Testimony is clear as to the result which, in the long run, attends their operations; commissions and interest charges constitute a factor always working against them. Since good luck and bad luck alternate in time, the gains only stimulate these men

to larger ventures, and they persist in them till a serious or ruinous loss forces them out of the "Street."

(5.) Inexperienced persons, who act on interested advice, "tips," advertisements in newspapers, or circulars sent by mail, or "take flyers" in absolute ignorance, and with blind confidence in their luck. Almost without exception they eventually lose.

Character of Transactions

It is unquestionable that only a small part of the transactions upon the Exchange is of an investment character; a substantial part may be characterized as virtually gambling. Yet we are unable to see how the State could distinguish by law between proper and improper transactions, since the forms and the mechanisms used are identical. Rigid statutes directed against the latter would seriously interfere with the former. The experience of Germany with similar legislation is illuminating. But the Exchange, with the plenary power over members and their operations, could provide correctives, as we shall show.

Margin Trading

Purchasing securities on margin is as legitimate a transaction as a purchase of any other property in which part payment is deferred. We therefore see no reason whatsoever for recommending the radical change suggested, that margin trading be prohibited.

Two practices are prolific of losses, namely, buying active securities on small margins and buying unsound securities, paying for them in full. The losses in the former case are due to the quick turns in the market, to which active stocks are subject; these exhaust the margins and call for more money than the purchasers can supply. The losses in the latter case are largely due to misrepresentations of interested parties and unscrupulous manipulations.

To correct the evils of misrepresentation and manipulation, we shall offer in another part of this report certain recommendations. In so far as losses are due to insufficient margins,

they would be materially reduced if the customary percentage of margins were increased. The amount of margin which a broker requires from a speculative buyer of stocks depends, in each case, on the credit of the buyer; and the amount of credit which one person may extend to another is a dangerous subject on which to legislate. Upon the other hand, a rule made by the Exchange could safely deal with the prevalent rate of margins required from customers. In preference, therefore, to recommending legislation, we urge upon all brokers to discourage speculation upon small margins and upon the Exchange to use its influence, and, if necessary, its power, to prevent members from soliciting and generally accepting business on a less margin than 20 per cent.

Pyramiding

"Pyramiding," which is the use of paper profits in stock transactions as a margin for further commitments, should be discouraged. The practice tends to produce more extreme fluctuations and more rapid wiping out of margins. If the stock brokers and the banks would make it a rule to value securities for the purpose of margin or collateral, not at the current price of the moment, but at the average price of, say, the previous two or three months (provided that such average price were not higher than the price of the moment), the dangers of pyramiding would be largely prevented.

Short-selling

We have been strongly urged to advise the prohibition or limitation of short sales, not only on the theory that it is wrong to agree to sell what one does not possess, but that such sales reduce the market price of the securities involved. We do not think that it is wrong to agree to sell something that one does not now possess, but expects to obtain later. Contracts and agreements to sell, and deliver in the future, property which one does not possess at the time of the contract, are common in all kinds of business. The man who has "sold short" must some day buy in order to return the stock which he has borrowed to make the short sale. Short-sellers en-

deavor to select times when prices seem high in order to sell, and times when prices seem low in order to buy, their action in both cases serving to lessen advances and diminish declines of price. In other words, short-selling tends to produce steadiness in prices, which is an advantage to the community. No other means of restraining unwarranted marking up and down of prices has been suggested to us.

The legislation of the State of New York on the subject of short-selling is significant. In 1812 the Legislature passed a law declaring all contracts for the sale of stocks and bonds void, unless the seller at the time was the actual owner or assignee thereof or authorized by such owner or assignee to sell the same. In 1858 this act was repealed by a statute now in force, which reads as follows:

“An agreement for the purchase, sale, transfer or delivery of a certificate or other evidence of debt, issued by the United States or by any State, or municipal or other corporation, or any share or interest in the stock of any bank, corporation or joint-stock association, incorporated or organized under the laws of the United States or of any State, is not void, or voidable, because the vendor, at the time of making such contract, is not the owner or possessor of the certificate, or certificates, or other evidence of debt, share or interest.”

It has been urged that this statute “specifically legalizes stock gambling.” As a matter of fact, however, the law would be precisely the same if that statute were repealed, for it is the well-settled common law of this country, as established by the decisions of the Supreme Court of the United States and of the State courts, that all contracts, other than mere wagering contracts, for the future purchase or sale of securities or commodities are valid, whether the vendor is, or is not, at the time of making such contract, the owner or possessor of the securities or commodities involved, in the absence of a statute making such contracts illegal. So far as any of these transactions are mere wagering transactions, they are illegal, and not enforceable, as the law now stands.

It has been suggested to us that there should be a require-

ment either by law or by rule of the Stock Exchange, that no one should sell any security without identifying it by number or otherwise. Such a rule would cause great practical difficulties in the case of securities not present in New York at the time when the owner desires to sell them, and would increase the labor and cost of doing business. But, even if this were not the effect, the plan contemplates a restriction upon short sales, which, for the reasons set forth above, seems to us undesirable. It is true that this identification plan exists in England as to sales of bank shares (Leeman act of 1867); but it has proved a dead letter. It has also been used in times of apprehended panic upon the French Bourse, but opinions in regard to its effect there are conflicting. While some contend that it has been useful in preventing panics, others affirm that it has been used simply for the purpose of protecting bankers who were loaded down with certain securities which they were trying to distribute, and who, through political influence, procured the adoption of the rule for their special benefit.

Manipulation of Prices

A subject to which we have devoted much time and thought is that of the manipulation of prices by large interests. This falls into two general classes:

- (1.) That which is resorted to for the purpose of making a market for issues of new securities.
- (2.) That which is designed to serve merely speculative purposes in the endeavor to make a profit as the result of fluctuations which have been planned in advance.

The first kind of manipulation has certain advantages, and when not accompanied by "matched orders" is unobjectionable *per se*. It is essential to the organization and carrying through of important enterprises, such as large corporations, that the organizers should be able to raise the money necessary to complete them. This can be done only by the sale of securities. Large blocks of securities such as are frequently issued by railroad and other companies, cannot be sold over the counter or directly to the ultimate investor, whose confidence in them can, as a rule, be only gradually

established. They must therefore, if sold at all, be disposed of to some syndicate, who will in turn pass them on to middlemen or speculators, until, in the course of time, they find their way into the boxes of investors. But prudent investors are not likely to be induced to buy securities which are not regularly quoted on some exchange, and which they cannot sell, or on which they cannot borrow money at their pleasure. If the securities are really good and bids and offers *bona fide*, open to all sellers and buyers, the operation is harmless. It is merely a method of bringing new investments into public notice.

The second kind of manipulation mentioned is undoubtedly open to serious criticism. It has for its object either the creation of high prices for particular stocks, in order to draw in the public as buyers and to unload upon them the holdings of the operators, or to depress the prices and induce the public to sell. There have been instances of gross and unjustifiable manipulation of securities, as in the case of American Ice stock. While we have been unable to discover any complete remedy short of abolishing the Stock Exchange itself, we are convinced that the Exchange can prevent the worst forms of this evil by exercising its influence and authority over the members to prevent them. When continued manipulation exists it is patent to experienced observers.

"Wash Sales" and "Matched Orders"

In the foregoing discussion we have confined ourselves to *bona fide* sales. So far as manipulation of either class is based upon fictitious or so-called "wash sales," it is open to the severest condemnation, and should be prevented by all possible means. These fictitious sales are forbidden by the rules of all the regular exchanges, and are not enforceable at law. They are less frequent than many persons suppose. A transaction must take place upon the floor of the Exchange to be reported, and if not reported does not serve the purpose of those who engage in it. If it takes place on the floor of the Exchange, but is merely a pretence, the brokers involved run the risk of detection and expulsion, which is to them a

sentence of financial death. There is, however, another class of transactions called "matched orders," which differ materially from those already mentioned, in that they are actual and enforceable contracts. We refer to that class of transactions, engineered by some manipulator, who sends a number of orders simultaneously to different brokers, some to buy and some to sell. These brokers, without knowing that other brokers have countervailing orders from the same principal, execute their orders upon the floor of the Exchange, and the transactions become binding contracts; they cause an appearance of activity in a certain security which is unreal. Since they are legal and binding, we find a difficulty in suggesting a legislative remedy. But where the activities of two or more brokers in certain securities become so extreme as to indicate manipulation rather than genuine transactions, the officers of the Exchange would be remiss unless they exercised their influence and authority upon such members in a way to cause them to desist from such suspicious and undesirable activity. As already stated, instances of continuous manipulation of particular securities are patent to every experienced observer, and could without difficulty be discouraged, if not prevented, by prompt action on the part of the Exchange authorities.

Corners

The subject of corners in the stock market has engaged our attention. The Stock Exchange might properly adopt a rule providing that the governors shall have power to decide when a corner exists and to fix a settlement price, so as to relieve innocent persons from the injury or ruin which may result therefrom. The mere existence of such a rule would tend to prevent corners.

Failures and Examination of Books

We have taken testimony on the subject of recent failures of brokers, where it has been discovered that they were insolvent for a long period prior to their public declaration of failure, and where their activities after their insolvency not only caused great loss to their customers, but also, owing to

their efforts to save themselves from bankruptcy, worked great injury to innocent outsiders. For cases of this character, there should be a law analogous to that forbidding banks to accept deposits after insolvency is known; and we recommend a statute making it a misdemeanor for a broker to receive any securities or cash from any customer (except in liquidating or fortifying an existing account), or to make any further purchases or sales for his own account, after he has become insolvent; with the provision that a broker shall be deemed insolvent when he has on his books an account or accounts which, if liquidated, would exhaust his assets, unless he can show that he had reasonable ground to believe that such accounts were good.

The advisability of requiring by State authority an examination of the books of all members of the Exchange, analogous to that required of banks, has been urged upon us. Doubtless some failures would be prevented by such a system rigidly enforced, although bank failures do occur in spite of the scrutiny of the examiners. Yet the relations between brokers and their customers are of so confidential a nature that we do not recommend an examination of their books by any public authority. The books and accounts of the members of the Exchange should, however, be subjected to periodic examination and inspection pursuant to rules and regulations to be prescribed by the Exchange, and the result should be promptly reported to the governors thereof.

It is vain to say that a body possessing the powers of the board of governors of the Exchange, familiar with every detail of the mechanism, generally acquainted with the characteristics of members, cannot improve present conditions. It is a deplorable fact that with all their power and ability to be informed, it is generally only after a member or a firm is overtaken by disaster, involving scores or hundreds of innocent persons, and causing serious disturbances, that the Exchange authorities take action. No complaint can be registered against the severity of the punishment then meted out; but in most cases the wrongdoing thus atoned for, which has been going on for a considerable period, might have been

discovered under a proper system of supervision, and the vastly preponderant value of prevention over cure demonstrated.

Rehypothecation of Securities

We have also considered the subject of rehypothecating, loaning, and other use of securities by brokers who hold them for customers. So far as any broker applies to his own use any securities belonging to a customer, or hypothecates them for a greater amount than the unpaid balance of the purchase price, without the customer's consent, he is undoubtedly guilty of a conversion under the law as it exists to-day and we call this fact to the attention of brokers and the public. When a broker sells the securities purchased for a customer who has paid therefor in whole or in part, except upon the customer's default, or disposes of them for his own benefit, he should be held guilty of larceny, and we recommend a statute to that effect.

Dealing for Clerks

The Exchange now has a rule forbidding any member to deal or carry an account for a clerk or employee of any other member. This rule should be extended so as to prevent dealing for account of any clerk or subordinate employee of any bank, trust company, insurance company, or other moneyed corporation or banker.

Listing Requirements

Before securities can be bought and sold on the Exchange, they must be examined. The committee on Stock List is one of the most important parts of the organization, since public confidence depends upon the honesty, impartiality, and thoroughness of its work. While the Exchange does not guarantee the character of any securities, or affirm that the statements filed by the promoters are true, it certifies that due diligence and caution have been used by experienced men in examining them. Admission to the list, therefore, establishes a presumption in favor of the soundness of the security so admitted. Any securities authorized to be bought and sold on

the Exchange, which have not been subjected to such scrutiny, are said to be in the unlisted department, and traders who deal in them do so at their own risk. We have given consideration to the subject of verifying the statements of fact contained in the papers filed with the applications for listing, but we do not recommend that either the State or the Exchange take such responsibility. Any attempt to do so would undoubtedly give the securities a standing in the eyes of the public which would not in all cases be justified. In our judgment, the Exchange should, however, adopt methods to compel the filing of frequent statements of the financial condition of the companies whose securities are listed, including balance sheets, income and expense accounts, etc., and should notify the public that these are open to examination under proper rules and regulations. The Exchange should also require that there be filed with future applications for listing a statement of what the capital stock of the company has been issued for, showing how much has been issued for cash, how much for property, with a description of the property, etc., and also showing what commission, if any, has been paid to the promoters or vendors. Furthermore, means should be adopted for holding those making the statements responsible for the truth thereof. The unlisted department, except for temporary issues, should be abolished.

Fictitious Trades

Complaint is made that orders given by customers are sometimes not actually executed, although so reported by the broker. We recommend the passage of a statute providing that, in case it is pleaded in any suit by or against a broker that the purchase or sale was fictitious, or was not an actual *bona fide* purchase or sale by the broker as agent for the customer, the court or jury shall make a special finding upon that fact. In case it is found that the purchase or sale was not actual and *bona fide* the customer shall recover three times the amount of the loss which he sustained thereby; and copies of the finding shall be sent to the district attorney of the county and to the Exchange, if the broker be a member.

Unit of Trading

The Exchange should insist that all trading be done on the basis of a reasonably small unit (say 100 shares of stock or \$1,000 of bonds), and should not permit the offers of such lots, or bids for such lots, to be ignored by traders offering or bidding for larger amounts. The practice now permitted of allowing bids and offers for large amounts, all or none, assists the manipulation of prices. Thus a customer may send an order to sell 100 shares of a particular stock at par, and a broker may offer to buy 1,000 shares, all or none, at 101, and yet no transaction take place. The bidder in such a case should be required to take all the shares offered at the lower price before bidding for a larger lot at a higher price. This would tend to prevent matched orders.

Stock Clearing House

We have also considered the subject of the Stock Exchange Clearing House. While it is undoubtedly true that the clearing of stocks facilitates transactions which may be deemed purely manipulative, or virtually gambling transactions, nevertheless we are of the opinion that the Exchange could not do its necessary and legitimate business but for the existence of the clearing system, and, therefore, that it is not wise to abolish it.

The transactions in stocks which are cleared are transcribed each day on what are called "clearing sheets," and these sheets are passed into the Clearing House and there filed for one week only. In view of the value of these sheets as proving the transactions and the prices, they should be preserved by the Exchange for at least six years, and should be at the disposal of the courts, in case of any dispute.

Specialists

We have received complaints that specialists on the floor of the Exchange, dealing in inactive securities, sometimes buy or sell for their own account while acting as brokers. Such acts without the principal's consent are illegal. In every such case recourse may be had to the courts.

Notwithstanding that the system of dealing in specialties is subject to abuses, we are not convinced that the English method of distinguishing between brokers and jobbers serves any better purpose than our own practice, while its introduction here would complicate business. It should also be noted that the practice of specialists in buying and selling for their own account often serves to create a market where otherwise one would not exist.

Branch Offices

Complaint has been made of branch offices in the city of New York, often luxuriously furnished and sometimes equipped with lunch rooms, cards, and liquor. The tendency of many of them is to increase the lure of the ticker by the temptation of creature comforts, appealing thus to many who would not otherwise speculate.' The governors of the Exchange inform us that they realize that some of these offices have brought discredit on the Exchange, and that on certain occasions they have used their powers to suppress objectionable features. It seems to us that legitimate investors and speculators might, without much hardship, be compelled to do business at the main offices, and that a hard-and-fast rule against all branch offices in the city of New York might well be adopted by the Exchange. In any event, we are convinced that a serious and effective regulation of these branch offices is desirable.

Incorporation of Exchange

We have been strongly urged to recommend that the Exchange be incorporated, in order to bring it more completely under the authority and supervision of the State and the process of the courts. Under existing conditions, being a voluntary organization, it has almost unlimited power over the conduct of its members, and it can subject them to instant discipline for wrongdoing, which it could not exercise in a summary manner if it were an incorporated body. We think that such power residing in a properly chosen committee is distinctly advantageous. The submission of such questions to the courts would involve delays and technical obstacles

which would impair discipline without securing any greater measure of substantial justice. While this committee is not entirely in accord on this point, no member is yet prepared to advocate the incorporation of the Exchange and a majority of us advise against it, upon the ground that the advantages to be gained by incorporation may be accomplished by rules of the Exchange and by statutes aimed directly at the evils which need correction.

The Stock Exchange in the past, although frequently punishing infractions of its rules with great severity, has, in our opinion, at times failed to take proper measures to prevent wrongdoing. This has been probably due not only to a conservative unwillingness to interfere in the business of others, but also to a spirit of comradeship which is very marked among brokers, and frequently leads them to overlook misconduct on the part of fellow-members, although at the same time it is a matter of cynical gossip and comment in the street. The public has a right to expect something more than this from the Exchange and its members. This committee, in refraining from advising the incorporation of the Exchange, does so in the expectation that the Exchange will in the future take full advantage of the powers conferred upon it by its voluntary organization, and will be active in preventing wrongdoing such as has occurred in the past. Then we believe that there will be no serious criticism of the fact that it is not incorporated. If, however, wrongdoing recurs, and it should appear to the public at large that the Exchange has been derelict in exerting its powers and authority to prevent it, we believe that the public will insist upon the incorporation of the Exchange and its subjection to State authority and supervision.

Wall Street as a Factor

There is a tendency on the part of the public to consider Wall Street and the New York Stock Exchange as one and the same thing. This is an error arising from their location. We have taken pains to ascertain what proportion of the business transacted on the Exchange is furnished by New

York City. The only reliable sources of information are the books of the commission houses. An investigation was made of the transactions on the Exchange for a given day, when the sales were 1,500,000 shares. The returns showed that on that day 52 per cent. of the total transactions on the Exchange apparently originated in New York City, and 48 per cent. in other localities.

THE CONSOLIDATED STOCK EXCHANGE

The Consolidated Exchange was organized as a mining stock exchange in 1875, altering its name and business in 1886. Although of far less importance than the Stock Exchange, it is nevertheless a *secondary market* of no mean proportions; by far the greater part of the trading is in securities listed upon the main exchange, and the prices are based upon the quotations made there. The sales average about 45,000,000 shares per annum. The fact that its members make a specialty of "broken lots," i. e., transactions in shares less than the 100 unit, is used as a ground for the claim that it is a serviceable institution for investors of relatively small means. But it is obvious that its utility as a provider of capital for enterprises is exceedingly limited; and that it affords facilities for the most injurious form of speculation — that which attracts persons of small means.

It also permits dealing in shares not listed in the main exchange, and in certain mining shares, generally excluded from the other. In these cases it prescribes a form of listing requirements, but the original listing of securities is very rarely availed of. The rules also provide for dealing in grain, petroleum and other products. Wheat is, however, at present the only commodity actively dealt in, and this is due solely to the permission to trade in smaller lots than the Produce Exchange unit of 5,000 bushels.

There are 1,225 members, about 450 active, and memberships have sold in recent years at from \$650 to \$2,000. In general the methods of conducting business are similar to those of the larger exchange, and subject to the same abuses.

Very strained relations have existed between the two se-

curity exchanges since the lesser one undertook in 1886 to deal in stocks. The tension has been increased by the methods by which the Consolidated obtains the quotations of the other, through the use of the "tickers" conveying them. It is probable that without the use of these instruments the business of the Consolidated Exchange would be paralyzed; yet the right to use them rests solely upon a technical point in a judicial decision which enjoins their removal.

COGNATE SUBJECTS

Holding Companies

Connected with operations on the Stock Exchange are a class of manipulations originating elsewhere. The values of railway securities, for example, depend upon the management of the companies issuing them, the directors of which may use their power to increase, diminish, or even extinguish them, while they make gains for themselves by operations on the Exchange. They may advance the price of a stock by an unexpected dividend, or depress it by passing an expected one. They may water a stock by issuing new shares, with no proportionate addition to the productive assets of the company, or load it with indebtedness, putting an unexpected lien on the shareholders' property. Such transactions affect not only the fortunes of the shareholders, who are designedly kept in ignorance of what is transpiring, but also the value of investments in other similar companies the securities of which are affected sympathetically. Railroad wrecking was more common in the last half-century than it is now, but we have some glaring examples of it in the débris of our street railways to-day.

The existence and misuse of such powers on the part of directors are a menace to corporate property and a temptation to officials who are inclined to speculate, leading them to manage the property so as to fill their own pockets by indirect and secret methods.

A holding company represents the greatest concentration of power in a body of directors and the extreme of helplessness on the part of shareholders. A corporation may be

so organized that its bonds and preferred stock represent the greater part of its capital, while the common stock represents the actual control. Then, if a second company acquires a majority of the common stock, or a majority of the shares that are likely to be voted at elections, it may control the former company, and as many other companies as it can secure. The shareholders of the subsidiary companies may be thus practically deprived of power to protect themselves against injurious measures and even to obtain information of what the holding company is doing, or intends to do, with their property.

As a first step toward mitigating this evil we suggest that the shareholders of subsidiary companies, which are dominated by holding companies, or voting trusts, shall have the same right to examine the books, records, and accounts of such holding companies, or voting trusts, that they have in respect of the companies whose shares they hold, and that the shareholders of holding companies have the same right as regards the books, records, and accounts of the subsidiary companies. The accounts of companies not merged should be separately kept and separately stated to their individual stockholders, however few they may be.

We may point out the fact that the powers which holding companies now exercise were never contemplated, or imagined, when joint stock companies were first legalized. If Parliament and Legislatures had foreseen their growth they would have erected barriers against it.

Receiverships

Our attention has been directed to the well-known abuses frequently accompanying receiverships of large corporations, and more especially public service corporations, and the issue of receivers' certificates. We feel that the numerous cases of long-drawn-out receiverships, in some instances lasting more than ten years, and of the issue of large amounts of receivers' certificates, which take precedence over even first mortgage bonds, are deserving of most serious consideration.

Legislation providing for a short-time limitation on receiverships, or for a limitation of receivers' certificates to a small percentage of the mortgage liens on the property, could be rendered unnecessary, however, by the action of the courts themselves along these lines, so as to make impossible in the future the abuses which have been so common in the past.

Effect of the Money Market on Speculation

It has been urged that your committee consider the influence of the money market upon security speculation.

As a result of conditions to which the defects of our monetary and banking systems chiefly contribute, there is frequently a congestion of funds in New York City, when the supply is in excess of business needs and the accumulated surplus from the entire country generally is thereby set free for use in the speculative market. Thus there almost annually occurs an inordinately low rate for "call loans," at times less than one per cent. During the prevalence of this abnormally low rate speculation is unduly incited, and speculative loans are very largely expanded.

On the other hand, occasional extraordinary industrial activity, coupled with the annually recurring demands for money during the crop-moving season, causes money stringency, and the calling of loans made to the stock market; an abnormally high interest rate results, attended by violent reaction in speculation and abrupt fall in prices. The pressure to retain funds in the speculative field at these excessively high interest rates tends to a curtailment of reasonable accommodation to commercial and manufacturing interests, frequently causing embarrassment and at times menacing a crisis.

The economic questions involved in these conditions are the subject of present consideration by the Federal authorities and the National Monetary Commission. They could not be adjusted or adequately controlled either through Exchange regulation or State legislation.

The Usury Law

The usury law of this State prohibits the taking of more than 6 per cent. interest for the loan of money, but by an amendment adopted in 1882 an exception is made in the case of loans of \$5,000, or more, payable on demand and secured by collateral. It is claimed by some that, since this exception enables stock speculators, in times of great stringency, to borrow money by paying excessively high rates of interest, to the exclusion of other borrowers, a repeal of this provision would check inordinate speculation. We direct attention, however, to the fact that the statute in question excepts such loans as are secured by warehouse receipts, bills of lading, bills of exchange, and other negotiable instruments. Hence its operation is not limited to Stock Exchange transactions, or to speculative loans in general. Moreover, the repeal of the statute would affect only the conditions when high rates of interest are exacted, and not those of abnormally low rates, which really promote excessive speculation. Finally, our examination indicates that prior to the enactment of the statute of 1882 such loans were negotiated at the maximum (6 per cent.), plus a commission, which made it equivalent to the higher rate; and a repeal of the statute would lead to the resumption of this practice. Therefore, as the repeal would not be beneficial, we cannot recommend any legislation bearing upon the interest laws of the State, unless it be the repeal of the usury law altogether, as we believe that money will inevitably seek the point of highest return for its use. In nine States of the Union there are at present no usury laws.

THE CURB MARKET

There is an unorganized stock market held in the open air during exchange hours. It occupies a section of Broad Street. An enclosure in the centre of the roadway is made by means of a rope, within which the traders are supposed to confine themselves, leaving space on either side for the passage of street traffic; but during days of active trading the crowd often extends from curb to curb.

There are about 200 subscribers, of whom probably 150 ap-

pear on the curb each day, and the machinery of the operations requires the presence of as many messenger boys and clerks. Such obstruction of a public thoroughfare is obviously illegal, but no attempt has been made by the city authorities to disperse the crowd that habitually assembles there.

This open-air market, we understand, is dependent for the great bulk of its business upon members of the Stock Exchange, approximately 85 per cent. of the orders executed on the curb coming from Stock Exchange houses. The Exchange itself keeps the curb market in the street, since it forbids its own members engaging in any transaction in any other security exchange in New York. If the curb were put under a roof and organized, this trading could not be maintained.

Its Utility

The curb market has existed for upwards of thirty years, but only since the great development of trading in securities began, about the year 1897, has it become really important. It affords a public market place where all persons can buy and sell securities which are not listed on any organized exchange. Such rules and regulations as exist are agreed to by common consent, and the expenses of maintenance are paid by voluntary subscription. An agency has been established by common consent through which the rules and regulations are prescribed.

This agency consists solely of an individual who, through his long association with the curb, is tacitly accepted as arbiter. From this source we learn that sales recorded during the year 1908 were roughly as follows:

Bonds	\$66,000,000
Stocks, industrials, shares.....	4,770,000
Stocks, mining, shares.....	41,825,000

Official quotations are issued daily by the agency and appear in the public press. Corporations desiring their securities to be thus quoted are required to afford the agency certain information, which is, however, superficial and incomplete. There is nothing on the curb which corresponds to the

listing process of the Stock Exchange. The latter, while not guaranteeing the soundness of the securities, gives a *prima facie* character to those on the list, since the stock list committee takes some pains to learn the truth. The decisions of the agent of the curb are based on insufficient data, and since much of the work relates to mining schemes in distant States and Territories, and foreign countries, the mere fact that a security is quoted on the curb should create no presumption in its favor; quotations frequently represent "wash sales," thus facilitating swindling enterprises.

Evils of Unorganized Status

Bitter complaints have reached us of frauds perpetrated upon confiding persons, who have been induced to purchase mining shares because they are quoted on the curb; these are frequently advertised in newspapers and circulars sent through the mails as so quoted. Some of these swindles have been traced to their fountain-heads by the Post Office Department, to which complaint has been made; but usually the swindler, when cornered, has settled privately with the individual complainant, and then the prosecution has failed for want of testimony. Meanwhile the same operations may continue in many other places, till the swindle becomes too notorious to be profitable.

Notwithstanding the lack of proper supervision and control over the admission of securities to the privilege of quotation, some of them are meritorious, and in this particular the curb performs a useful function. The existence of the cited abuses does not, in our judgment, demand the abolition of the curb market. Regulation is, however, imperative. To require an elaborate organization similar to that existing in the Exchanges would result in the formation of another curb free from such restraint.

As has been stated, about 85 per cent. of the business of the curb comes through the offices of members of the New York Stock Exchange, but a provision of the constitution of that Exchange prohibits its members from becoming members of, or dealing on, any other *organized* Stock Exchange

in New York. Accordingly, operators on the curb market have not attempted to form an organization. The attitude of the Stock Exchange is therefore largely responsible for the existence of such abuses as result from the want of organization of the curb market. The brokers dealing on the latter do not wish to lose their best customers, and hence they submit to these irregularities and inconveniences.

Some of the members of the Exchange dealing on the curb have apparently been satisfied with the prevailing conditions, and in their own selfish interests have maintained an attitude of indifference toward abuses. We are informed that some of the most flagrant cases of discreditable enterprises finding dealings on the curb were promoted by members of the New York Stock Exchange.

Reformation of the Curb

The present apparent attitude of the Exchange toward the curb seems to us clearly inconsistent with its moral obligations to the community at large. Its governors have frequently avowed before this committee a purpose to coöperate to the greatest extent for the remedy of any evils found to exist in stock speculation. The curb market as at present constituted affords ample opportunity for the exercise of such helpfulness.

The Stock Exchange should compel the formulation and enforcement of such rules as may seem proper for the regulation of business on the curb, the conduct of those dealing thereon, and, particularly, for the admission of securities to quotation.

If the curb brokers were notified that failure to comply with such requirements would be followed by an application of the rule of non-intercourse, there is little doubt that the orders of the Exchange would be obeyed. The existing connection of the Exchange gives it ample power to accomplish this, and we do not suggest anything implying a more intimate connection.

Under such regulation, the curb market might be decently housed to the relief of its members and the general public.

The Abuse of Advertising

A large part of the discredit in the public mind attaching to "Wall Street" is due to frauds perpetrated on the small investor throughout the country in the sale of worthless securities by means of alluring circulars and advertisements in the newspapers. To the success of such swindling enterprises a portion of the press contributes.

Papers which honestly try to distinguish between swindling advertisements and others, may not in every instance succeed in doing so; but readiness to accept advertisements which are obviously traps for the unwary is evidence of a moral delinquency which should draw out the severest public condemnation.

So far as the press in the large cities is concerned the correction of the evil lies, in some measure, in the hands of the reputable bankers and brokers, who, by refusing their advertising patronage to newspapers notoriously guilty in this respect, could compel them to mend their ways, and at the same time prevent fraudulent schemes from deriving an appearance of merit by association with reputable names.

Another serious evil is committed by men who give standing to promotions by serving as directors without full knowledge of the affairs of the companies, and by allowing their names to appear in prospectuses without knowing the accuracy and good faith of the statements contained therein. Investors naturally and properly pay great regard to the element of personal character, both in the offering of securities and in the management of corporations, and can therefore be deceived by the names used in unsound promotions.

British System Considered

We have given much attention to proposals for compelling registration, by a bureau of the State government, of all corporations whose securities are offered for public sale in this State, accompanied by information regarding their financial responsibility and prospects, and prohibiting the public advertisement or sale of such securities without a certificate from the bureau that the issuing company has been so registered.

The object of such registration would be to identify the promoters, so that they might be readily prosecuted in case of fraud. Such a system exists in Great Britain. The British "Companies Act" provides for such registration, and the "Directors' Liability Act" regulates the other evil referred to above. Some members of your committee are of the opinion that these laws should be adopted in this country, so far as they will fit conditions here.

This would meet with some difficulties, due in part to our multiple system of State government. If the law were in force only in this State, the advertisement and sale of the securities in question would be unhindered in other markets, and companies would be incorporated in other States, in order that their directors and promoters should escape liability. The certificate of registration might be accepted by inexperienced persons as an approval by State authority of the enterprise in question. For these reasons the majority of your committee does not recommend the regulation of such advertising and sale by State registration.

In so far as the misuse of the post office for the distribution of swindling circulars could be regulated by the Federal authorities, the officials have been active in checking it. They inform us that vendors of worthless securities are aided materially by the opportunity to obtain fictitious price quotations for them on the New York Curb market.

Legislation Recommended

For the regulation of the advertising evils, including the vicious "tipster's" cards, we recommend an amendment to the Penal Code to provide that any person who advertises, in the public press or otherwise, or publishes, distributes or mails, any prospectus, circular, or other statement in regard to the value of any stock, bonds, or other securities, or in regard to the business affairs, property, or financial condition of any corporation, joint stock association, copartnership or individual issuing stock, bonds, or other similar securities, which contains any statement of fact which is known to such person to be false, or as to which such person has no reason-

able grounds for believing it to be true, or any promises or predictions which he cannot reasonably justify, shall be guilty of a misdemeanor; and, further, that every newspaper or other publication printing or publishing such an advertisement, prospectus, circular, or other statement, shall, before printing or publishing the same, obtain from the person responsible for the same, and retain, a written and signed statement to the effect that such person accepts responsibility for the same, and for the statements of fact contained therein, which statement shall give the address, with street number, of such person; and that the publisher of any such newspaper or other publication which shall fail to obtain and retain such statement shall be guilty of a misdemeanor.

BUCKET SHOPS

Bucket shops are ostensibly brokerage offices, where, however, commodities and securities are neither bought nor sold in pursuance of customers' orders, the transactions being closed by the payment of gains or losses, as determined by price quotations. In other words, they are merely places for the registration of bets or wagers; their machinery is generally controlled by the keepers, who can delay or manipulate the quotations at will.

The law of this State, which took effect September 1, 1908, makes the keeping of a bucket shop a felony, punishable by fine and imprisonment, and in the case of corporations, on second offences by dissolution or expulsion from the State. In the case of individuals the penalty for a second offence is the same as for the first. These penalties are imposed upon the theory that the practice is gambling; but in order to establish the fact of gambling it is necessary, under the New York law, to show that *both* parties to the trade intended that it should be settled by the payment of differences, and not by delivery of property. Under the law of Massachusetts it is necessary to show only that the bucket-shop keeper so intended. The Massachusetts law provides heavier penalties for the second offence than for the first, and makes it a second offence if a bucket shop is kept open after the first conviction.

Amendment of Law Recommended

We recommend that the foregoing features of the Massachusetts law be adopted in this State; also that section 355 of the act of 1908 be amended so as to require brokers to furnish to their customers *in all cases*, and not merely on demand, the names of brokers from whom shares were bought and to whom they were sold; and that the following section be added to the act:

Witness's privilege:

"No person shall be excused from attending and testifying, or producing any books, papers, or other documents before any court or magistrate, upon any trial, investigation, or proceeding initiated by the district attorney for a violation of any of the provisions of this chapter, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding."

There has been a sensible diminution in the number of bucket shops in New York since the act of 1908 took effect, but there is still much room for improvement.

Continuous quotations of prices from an exchange are indispensable to a bucket shop, and when such quotations are cut off this gambling ends; therefore every means should be employed to cut them off.

Sales of Quotations

The quotations of exchanges have been judicially determined to be their own property, which may be sold under contracts limiting their use. In addition to supplying its own members in New York City with its quotations, the Stock

Exchange sells them to the telegraph companies, under contracts restricting the delivery of the service in New York City to subscribers approved by a committee of the Exchange; the contracts are terminable at its option. This restriction would imply a purpose on the part of the Exchange to prevent the use of the quotations by bucket-shop keepers. But the contracts are manifestly insufficient, in that they fail to cover the use of the service in places other than New York City; if corroboration were needed it could be found in the fact that the quotations are the basis for bucket-shop transactions in other cities. In such effort as has been made to control these quotations the Exchange has been hampered, to some extent, by the claim that telegraph companies are common carriers, and that as such they must render equal service to all persons offering to pay the regular charge therefor. This claim has been made in other States as well as in New York, and the telegraph companies have in the past invoked it as an excuse for furnishing quotations to people who were under suspicion, although it was not possible to prove that they were operating bucket shops. Recent decisions seem to hold that this claim is not well-founded. We advise that a law be passed providing that, so far as the transmission of continuous quotations is concerned, telegraph companies shall not be deemed common carriers, or be compelled against their volition to transmit such quotations to any person; also a law providing that if a telegraph company has reasonable ground for believing that it is supplying quotations to a bucket shop, it be criminally liable equally with the keeper of the bucket shop. Such laws would enable these companies to refuse to furnish quotations upon mere suspicion that parties are seeking them for an unlawful business, and would compel them to refuse such service wherever there was reasonable ground for believing that a bucket shop was being conducted.

Licensing Tickers

Tickers carrying the quotations should be licensed and bear a plate whereon should appear the name of the corporation, firm, or individual furnishing the service or installing the ticker, and a license number. Telegraph companies buying

or transmitting quotations from the exchanges should be required to publish semi-annually the names of all subscribers to the service furnished, and the number and location of the tickers, in a newspaper of general circulation published in the city or town in which such tickers are installed. In case the service is furnished to a corporation, firm, or person, in turn supplying the quotations to others, like particulars should be published. A record, open to public inspection, should be kept by the installing company showing the numbers and location of the tickers. Doubtless local boards of trade, civic societies, and private individuals would, if such information were within their reach, lend their aid to the authorities in the enforcement of the law.

Measures should be taken also to control the direct wire service for the transmission of quotations, and for the prompt discontinuance of such service in case of improper use thereof. In short, every possible means should be employed to prevent bucket shops from obtaining the continuous quotations, without which their depredations could not be carried on a single day.

THE COMMODITY EXCHANGES

Of the seven commodity exchanges in the city of New York, three dealing with Produce, Cotton, and Coffee, are classed as of major importance; two organized by dealers in Fruit and Hay, are classed as minor; and two others, the Mercantile (concerned with dairy and poultry products) and the Metal (concerned with mining products) are somewhat difficult of classification, as will appear hereafter.

THE MAJOR EXCHANGES

The business transacted on the three major exchanges is mainly speculative, consisting of purchases and sales for future delivery either by those who wish to eliminate risks or by those who seek to profit by fluctuations in the value of products. "Cash" or "spot" transactions are insignificant in volume.

The objects, as set forth in the charters, are to provide places for trading, establish equitable trade principles and

usages, obtain and disseminate useful information, adjust controversies, and fix by-laws and rules for these purposes.

Trading in differences of price and "wash sales" are strictly prohibited under penalty of expulsion. All contracts of sale call for delivery, and unless balanced and cancelled by equivalent contracts of purchase, must be finally settled by a delivery of the merchandise against cash payment of its value as specified in the terms of the contract; but the actual delivery may be waived by the consent of both parties. Possession is for the most part transferred from the seller to the purchaser by warehouse receipts entitling the holder to the ownership of the goods described.

Dealing in "Futures"

The selling of agricultural products for future delivery has been the subject of much controversy in recent years. A measure to prohibit such selling, known as the Hatch Anti-Option bill, was debated at great length in Congress during the years 1892, 1893, and 1894. Although it passed both House and Senate in different forms, it was finally abandoned by common consent. As shown hereafter, similar legislation in Germany has proved injurious; and when attempted by our States it has either resulted detrimentally or been inoperative. The subject was exhaustively considered by the Industrial Commission of Congress which in 1901 made an elaborate report (Vol. VI), showing that selling for future delivery, based upon a forecast of future conditions of supply and demand, is an indispensable part of the world's commercial machinery, by which prices are, as far as possible, equalized throughout the year to the advantage of both producer and consumer. The subject is also treated with clearness and impartiality in the *Cyclopedia of American Agriculture*, in an article on "Speculation and Farm Prices"; where it is shown that since the yearly supply of wheat, for example, matures within a comparatively short period of time somebody must handle and store the great bulk of it during the interval between production and consumption. Otherwise the price will be unduly depressed at the end of one harvest and correspondingly advanced before the beginning of another.

Buying for future delivery causes advances in prices; selling short tends to restrain inordinate advances. In each case there must be a buyer and a seller and the interaction of their trading steadies prices. Speculation thus brings into the market a distinct class of people possessing capital and special training who assume the risks of holding and distributing the proceeds of the crops from one season to another with the minimum of cost to producer and consumer.

Hedging

A considerable part of the business done by these exchanges consists of "hedging." This term is applied to the act of a miller, for example, who is under contract to supply a given quantity of flour monthly throughout the year. In order to insure himself against loss he makes a contract with anybody whom he considers financially responsible, to supply him wheat at times and in quantities needed. He "hedges" against a possible scarcity and consequent rise in the price of wheat. If the miller were restricted in his purchases to persons in the actual possession of wheat at the time of making the contract he would be exposed to monopoly prices. If the wheat producer were limited in his possibilities of sale to consumers only, he would be subjected to the depressing effects of a glut in the market in June and September, at times of harvest.

To the trader, manufacturer, or exporter, the act of transferring the risk of price fluctuations to other persons who are willing to assume it, has the effect of an insurance. It enables him to use all of his time and capital in the management of his own business instead of devoting some part of them to contingencies arising from unforeseen crop conditions.

Alternative Contracts

In order to eliminate the risk of a shortage of specific grades of the merchandise thus traded in, contracts generally permit the delivery of alternative grades, within certain limits, at differential prices; and if the grade to be delivered be not suitable for the ultimate needs of the purchaser, it can under ordinary circumstances be exchanged for the grade needed,

by the payment of the differential. It is true that in this exchange of grades there is sometimes a loss or a profit, owing to some unexpected diminution or excess of supply of the particular grade wanted, due to the weather or other natural causes.

Deposits of cash margins may be required mutually by members at the time of making contracts, and subsequent additional ones if market fluctuations justify.

Dealings for outsiders are usually upon a 10 per cent. margin; obviously if this margin were increased generally, say to 20 per cent., a considerable part of the criticism due to losses in speculation, particularly as to the Cotton Exchange, would be eliminated.

The major part of the transactions are adjusted by clearing systems, the method most prevalent being "ring settlements," by which groups of members having buying and selling contracts for identical quantities, offset them against each other, cancelling them upon the payment of the differences in prices.

THE PRODUCE EXCHANGE

The New York Produce Exchange was chartered by the Legislature in 1862, under the style of the "New York Commercial Association." The charter has been amended several times; in 1907 dealing in securities, as well as in produce, was authorized. There are over 2,000 members, but a large number are inactive. Some members are also connected with the Stock and Cotton Exchanges. The business includes dealing in all grains, cottonseed oil, and a dozen or more products; wheat is, however, the chief subject of trading, and part thereof consists of hedging by and for millers, exporters, and importers, both here and abroad. The quantity of wheat received in New York in the five years 1904-1908 averaged 21,000,000 bushels annually. No record of "cash" sales is kept. The reported sales of "futures" show in five years an annual average of 480,000,000 bushels, the year 1907 showing 610,000,000. Although some of these sales were virtually bets on price differences, all of them were contracts enforceable at law.

Clearing System

The greater part of the transactions are settled by a clearing system. The Clearing Association is a separate organization, duly incorporated, with a capital of \$25,000. All members of the association must settle daily by the clearing system; other members of the Exchange may do so. The Clearing Association assumes responsibility for the trades of all its members, and accordingly controls the exaction of margins from members to each other, and may increase them at any time if the fluctuations require it. The records of the clearings show day by day the status of each member's trading — how much he may be "long" or "short" in the aggregate. Thus the members have a system of protection against each other; the welfare of all depends upon keeping the commitments of each within safe limits. The official margin system operates as a commendable restraint upon over-speculation.

From our examination of the trading in mining stocks recently introduced, we conclude that the lack of experience of this body in this class of business has resulted in a neglect of proper safeguards to the investor and an undue incitement to speculative transactions of a gambling nature, and should not be tolerated on the Produce Exchange.

THE COTTON EXCHANGE

The New York Cotton Exchange was incorporated by a special charter in 1871. Its membership is limited to 450. It is now the most important cotton market in the world, as it provides the means for financing about 80 per cent. of the crop of the United States and is the intermediary for facilitating its distribution. In fact, it is the world's clearing house for the staple. Traders and manufacturers in Japan, India, Egypt, Great Britain, Germany, France, and Spain, as well as the United States, buy and sell here daily and the business is still increasing.

Cotton is the basis of the largest textile industry in the world. The business is conducted on a gigantic scale in many countries, by means of vast capital, complicated machinery, and varied processes involving considerable periods of time

between the raw material and the finished product. Selling for future delivery is necessary to the harmonious and uninterrupted movement of the staple from producer to consumer. Nearly all the trading, beginning with that of the planter, involves short-selling. The planter sells to the dealer, the dealer to the spinner, the spinner to the weaver, the weaver to the cloth merchant, before the cotton of any crop year is picked. Dealers who take the risk of price fluctuations insure all the other members of this trading chain against losses arising therefrom and spare them the necessity of themselves being speculators in cotton. The risks connected with raising and marketing cotton must be borne by some one, and this is now done chiefly by a class who can give their undivided attention to it.

GRADING OF COTTON

The grading of cotton is the vital feature of the trade. When no grade is specified in the contract, it is construed to be middling. There are now eighteen grades ranging from middling stained up to fair. This classification differs somewhat from that of other markets, and last January the Department of Agriculture at Washington took up the subject of standardizing the various grades for all American markets. The New York Cotton Exchange participated in this work; a standard was thus adopted, the types of which were supplied by its classification committee. It varies but little from the one previously in use here. The samples chosen to represent the several types are now sealed, in possession of the Department of Agriculture, awaiting the action of Congress.

The cotton plant is much exposed to vicissitudes of the weather. A single storm may change the grade of the crop in large sections of the country. It becomes necessary therefore to provide some protection for traders who have made contracts to deliver a particular grade which has become scarce by an accident which could not be foreseen. For this purpose alternative deliveries are allowed by the payment of corresponding price differentials, fixed by a committee of the Exchange twice annually, in the months of September and November.

Settlements of trades may be made individually, or by groups of members, or through a clearing system, the agency of which is a designated bank near the Exchange. No record is kept of the transactions, but it is probable that for a series of years the sales have averaged fully 50,000,000 bales annually.

Inordinate Speculation

There have been in the past, instances of excessive and unreasonable speculation upon the Cotton Exchange, notably the Sully speculation of 1904. We believe that there is also a great deal of speculation of the gambling type mentioned in the introduction to this report. In our opinion, the Cotton Exchange should take measures to restrain and, so far as possible, prevent these practices, by disciplining members who engage in them. The officers of the Exchange must in many cases be aware of these practices, and could, in our opinion, do much to discourage them.

THE COFFEE EXCHANGE

The Coffee Exchange was incorporated by special charter in 1885. It has 320 members, about 80 per cent. active.

It was established in order to supply a daily market where coffee could be bought and sold and to fix quotations therefor, in distinction from the former method of alternate glut and scarcity, with wide variations in price—in short, to create stability and certainty in trading in an important article of commerce. This it has accomplished; and it has made New York the most important primary coffee market in the United States. But there has been recently introduced a non-commercial factor known as “valorization,” a governmental scheme of Brazil, by which the public treasury has assumed to purchase and hold a certain percentage of the coffee grown there, in order to prevent a decline of the price. This has created abnormal conditions in the coffee trade.

All transactions must be reported by the seller to the superintendent of the Exchange, with an exact statement of the time and terms of delivery. The record shows that the aver-

age annual sales in the past five years have been in excess of 16,000,000 bags of 250 pounds each.

Contracts may be transferred or offset by voluntary clearings by groups of members. There is no general clearing system. There is a commendable rule providing that, in case of a "corner," the officials may fix a settlement price for contracts to avoid disastrous failures.

THE OTHER EXCHANGES

Of the exchanges which we have classed as minor, those dealing with Fruit and Hay appear to be in nowise concerned with speculation. No sales whatever are conducted on them, all transactions being consummated either in the places of business of the members or at public auction to the highest bidder. No quotations are made or published.

In the case of the other two commodity exchanges, the Mercantile and the Metal, new problems arise. Although quotations of the products appertaining to these exchanges are printed daily in the public press, they are not a record of actual transactions amongst members, either for immediate or future delivery.

It is true that on the Mercantile Exchange there are some desultory operations in so-called future contracts in butter and eggs, the character of which is, however, revealed by the fact that neither delivery by the seller nor acceptance by the buyer is obligatory; the contract may be voided by either party by payment of a maximum penalty of 5 per cent. There are nominal "calls," but trading is confessedly rare. The published quotations are made by a committee, the membership of which is changed periodically. That committee is actually a close corporation of the buyers of butter and eggs, and the prices really represent their views as to the rates at which the trade generally should be ready to buy from the farmers and country dealers.

Similar, but equally deceptive, is the method of making quotations on the Metal Exchange. In spite of the apparent activity of dealings in this organization in published market reports, there are no actual sales on the floor of the Metal

Exchange, and we are assured that there have been none for several years. Prices, are, however, manipulated up and down by a quotation committee of three, chosen annually, who represent the great metal selling agencies as their interest may appear, affording facilities for fixing prices on large contracts, mainly for the profit of a small clique, embracing, however, some of the largest interests in the metal trade.

These practices result in deceiving buyers and sellers. The making and publishing of quotations for commodities or securities by groups of men calling themselves an exchange, or by any other similar title, whether incorporated or not, should be prohibited by law, where such quotations do not fairly and truthfully represent any *bona fide* transactions on such exchanges. Under present conditions, we are of the opinion that the Mercantile and Metal Exchanges do actual harm to producers and consumers, and that their charters should be repealed.

THE EXPERIENCE OF GERMANY

In 1892 a commission was appointed by the German Government to investigate the methods of the Berlin Exchange. The regular business of this exchange embraced both securities and commodities; it was an open board where anybody by paying a small fee could trade either for his own account, or as a broker. The broker could make such charge as he pleased for his services, there being no fixed rate of commission. Settlements took place monthly. Margins were not always required. Under these circumstances many undesirable elements gained entrance to the Exchange and some glaring frauds resulted.

The commission was composed of government officials, merchants, bankers, manufacturers, professors of political economy, and journalists. It was in session one year and seven months. Its report was completed in November, 1893. Although there had been a widespread popular demand that all short-selling should be prohibited, the commission became satisfied that such a policy would be harmful to German trade and industry, and they so reported. They were willing,

however, to prohibit speculation in industrial stocks. In general the report was conservative in tone.

The Law of 1896

The Reichstag, however, rejected the bill recommended by the commission and in 1896 enacted a law much more drastic. The landowners, constituting the powerful Agrarian party, contended that short-selling lowered the price of agricultural products, and demanded that contracts on the Exchange for the future delivery of wheat and flour be prohibited. The Reichstag assented to this demand. It yielded also to demands for an abatement of stock speculation, and prohibited trading on the Exchange in industrial and mining shares for future delivery. It enacted also that every person desiring to carry on speculative transactions be required to enter his name in a public register, and that speculative trades by persons not so registered should be deemed gambling contracts and void. The object of the registry was to deter the small speculators from stock gambling and restrict speculation to men of capital and character.

The results were quite different from the intention of the legislators. Very few persons registered. Men of capital and character declined to advertise themselves as speculators. The small fry found no difficulty in evading the law. Foreign brokers, seeing a new field of activity opened to them in Germany, flocked to Berlin and established agencies for the purchase and sale of stocks in London, Paris, Amsterdam, and New York. Seventy such offices were opened in Berlin within one year after the law was passed, and did a flourishing business. German capital was thus transferred to foreign markets. The Berlin Exchange became insignificant and the financial standing of Germany as a whole was impaired.

Detrimental Consequences

This, however, was not the most serious consequence of the new law. While bankers and brokers, in order to do any business at all, were required to register, their customers were not compelled to do so. Consequently the latter could specu-

late through different brokers on both sides of the market, pocketing their profits and welching on their losses as gambling contracts. Numerous cases of this kind arose, and in some the plea of wagering was entered by men who had previously borne a good reputation. They had yielded to the temptation which the new law held out to them.

Another consequence was to turn over to the large banks much of the business previously done by independent houses. Persons who desired to make speculative investments in home securities applied directly to the banks, depositing with them satisfactory security for the purchases. As the German banks were largely promoters of new enterprises, they could sell the securities to their depositors and finance the enterprises with the deposits. This was a profitable and safe business in good times, but attended by dangers in periods of stringency, since the claims of depositors were payable on demand. Here again the law worked grotesquely, since customers whose names were not on the public register could, if the speculation turned out badly, reclaim the collateral or the cash that they had deposited as security.

Modification of Law in 1908

The evil consequences of the law of 1896 brought about its partial repeal in 1908. By a law then passed the government may, in its discretion, authorize speculative transactions in industrial and mining securities of companies capitalized at not less than \$5,000,000; the Stock Exchange Register was abolished; all persons whose names were in the "Handelsregister" (commercial directory), and all persons whose business was that of dealing in securities, were declared legally bound by contracts made by them on the Exchange. It provided that other persons were not legally bound by such contracts, but if such persons made deposits of cash or collateral security for speculative contracts, they could not reclaim them on the plea that the contract was illegal.

In so far as the Reichstag in 1896 had aimed to prevent small speculators from wasting their substance on the Ex-

change, it not only failed, but, as we have seen, it added a darker hue to evils previously existing.

Germany is now seeking to recover the legitimate business thrown away twelve years ago. She still prohibits short-selling of grain and flour, although the effects of the prohibition have been quite different from those which its supporters anticipated. As there are no open markets for those products, and no continuous quotations, both buyers and sellers are at a disadvantage; prices are more fluctuating than they were before the passage of the law against short-selling.

Thanks to the Chamber of Commerce

Our cordial thanks are due to the Chamber of Commerce of the State of New York, for the free use of rooms in its building for our sessions, and of its library, and other facilities.

Respectfully submitted,

HORACE WHITE, *Chairman*
CHARLES A. SCHIEREN
DAVID LEVENTRITT
CLARK WILLIAMS
JOHN B. CLARK
WILLARD V. KING
SAMUEL H. ORDWAY
EDWARD D. PAGE
CHARLES SPRAGUE SMITH

MAURICE L. MUHLEMAN,
Secretary.

ADDENDUM

THE ENGRAVING OF SECURITIES

New York, June 7, 1909

Hon. CHARLES E. HUGHES, *Governor, Albany, N. Y.*

SIR.—The committee appointed by you on the 14th of December, 1908, to make an inquiry into facts regarding speculation in securities and commodities, have received from the New York Bank Note Company a complaint that the Stock Exchange prevents any company except the American Bank Note Company from engraving any securities dealt in on that Exchange, thereby creating a hurtful monopoly. This complaint, originally addressed to yourself, was, at your instance, referred to us. As the subject-matter does not strictly appertain to speculation, the committee have directed me to reply to you in a communication separate from our general report.

We have given the officers of the Stock Exchange an opportunity to reply to this complaint. They say that on several former occasions they examined the work of the New York Bank Note Company and its predecessor, the Kendall Bank Note Company, and found that it did not meet the requirements of the exchange as to goodness of work, safeguards for plates, etc., and that the following named corporations are now eligible for such work to be used in dealings on the Stock Exchange:

American Bank Note Company, International Bank Note Company, Western Bank Note and Engraving Company of Chicago, British American Bank Note Company, for Canadian securities; Bradbury, Wilkinson & Co., London, England, for securities other than American and Canadian.

It appears to have been the practice of the American Bank Note Company or the company which now owns it, the United Bank Note Corporation, to absorb any other company that acquired the right to do work in the United States

for the New York Stock Exchange. In this way the Homer-Lee Bank Note Company and the Franklin Bank Note Company were absorbed in 1904, and the International Bank Note Company and the Western Bank Note and Engraving Company in 1905, although the corporate existence of the two last-named companies is still preserved. The officers of the Exchange admit that the companies which issue securities are sufferers from this monopoly, both as to prices charged for engraving and as to promptness of delivery, and say that the Exchange would be glad to be relieved of such monopoly.

From sources not connected with any of the parties to this controversy we learn that although the Stock Exchange will accept the work of certain foreign engraving companies, they will accept it only for foreign securities, and that attempts by American corporations to avail themselves of competitive prices by securing bids from foreign engravers have been thus defeated. From this it would seem that other considerations than the goodness of the work and carefulness in guarding the plates are here operative, and that the Stock Exchange has not rid itself of the evils of monopoly.

Yours very sincerely,

HORACE WHITE

Chairman

APPENDIX II

APPENDIX II

SARATOGA SPRINGS RESERVATION

Suit by the State Against the Carbonic Acid Gas Companies

Governor Hughes, on July 23, 1909, designated Justice William S. Andrews of Syracuse to hold an extraordinary term of the Supreme Court in Albany on September 20, 1909, for the determination of the following actions:

The People of the State of New York against the Geysers Natural Carbonic Acid Gas Company of Saratoga Springs, N. Y.;

The People of the State of New York against the New York Carbonic Acid Gas Company;

The People of the State of New York against the Lincoln Spring Company;

The People of the State of New York against the Natural Carbonic Gas Company;

The People of the State of New York against Mary Augusta Patterson; and

The People of the State of New York against Harry M. Levingsten;

and for the prompt trial and hearing thereof; and also for the prompt trial and hearing of any and all other actions, and any and all motions or proceedings, heretofore or hereafter brought, made or instituted by the People of the State of New York or by any citizen of the State for or with regard to the enforcement of any of the provisions of chapter 429 of the Laws of 1908, or in any manner relating thereto, or relating to any rights or duties thereunder or recognized thereby.

In connection with the order the Governor made public the following letters:

July 22, 1909.

Hon. EDWARD R. O'MALLEY, *Attorney-General, Albany, N. Y.*:

MY DEAR SIR.—I enclose herewith a copy of a letter under date of the 20th instant from Edward M. Shepard and Spencer Trask, Commissioners of the State Reservation at Saratoga Springs, with regard to the pending actions brought by the People of the State of New York for the enforcement of the provisions of chapter 429 of the Laws of 1908.

I agree with the Commissioners that it is of great importance to the public interest that the issues presented in these actions and in any other cases involving similar questions should be speedily determined and that the law of the State should be promptly enforced.

In accordance with the understanding reached in our interview yesterday, in which the matters referred to in the letter of the Commissioners were discussed, I have called pursuant to their suggestion an extraordinary special term of the Supreme Court to be held in Albany on the 20th day of September, 1909, and have designated Hon. William S. Andrews, a Justice of the Supreme Court of the fifth judicial district to hold the same.

I have the honor to remain,

Very respectfully yours,

(Signed) CHARLES E. HUGHES

SHEPARD, SMITH & HARKNESS.

128 Broadway, New York

July 20, 1909.

TO HIS EXCELLENCY, CHARLES E. HUGHES, *Governor, Albany, N. Y.*:

SIR.—Since, about first June last, your Excellency appointed us Commissioners of the Saratoga State Reservation, we have

made some study of the problems involved. We are now gathering information about the various spring properties at Saratoga and their value, and also about the treatment of like problems by other governments. We are especially studying such treatment in countries where similar groups of mineral springs—none of them, we believe, superior to those at Saratoga—have, under governmental ownership or control, not only been saved from destruction or a discredit which, so far as concerns their practical value, would be as fatal as their physical destruction, but have been so managed as to produce, not only valuable revenues to the proprietary governments and beneficent healing to multitudes, but also large and permanent and entirely legitimate and reputable profits, direct and indirect, to the communities where the springs are situate.

We had hoped that we might promptly, and in accord with the law of 1909, under which you entrusted us with our duties, initiate negotiations or proceedings looking to the State's acquisition of at least some of the spring properties and the establishment of the reservation or park contemplated in that law. But, almost at the outset, we meet difficulties with which our Commission has no power to deal, but which must be dealt with, if at all, by the Governor or other executive power of the State and by its legal representatives.

According to the decisions of our Court of Appeals and Supreme Court, the owners of some of the Saratoga Springs are systematically and openly violating the prohibitions of chapter 429 of the Laws of 1908 and are systematically and almost contemptuously disobeying the mandates of the Supreme Court which require abstinence from accelerating pumping. And this course of conduct, the courts have held, has been, and is now followed in order to make more profitable the properties of the defendants at the cost of injury to like property of others. It was by the act of 1908 that the law-making power of the State undertook, in the interest not only of all owners of any group of mineral springs having underground connection but of the State at large, to regulate their uses and to prevent artificial, excessive and unfair use of some springs of such a group to the injury of others of

them. The Court of Appeals has held to be constitutional and applicable to the Saratoga situation the prohibition of the act of 1908, against pumping from any well bored into the rock mineral waters which hold in solution mineral salts and an excess of carbonic acid gas, and against the production of any unnatural flow of carbonic acid gas issuing from or contained in any well made by boring into the rock for the purpose of selling such gas as a commodity otherwise than in connection with mineral water which contains it. And accordingly that Court, in February last (194 N. Y. 326), sustained an injunction of the Supreme Court against the Natural Carbonic Acid Gas Company restraining it from excessive pumping in violation of such constitutional provision.

It seemed to us that our Commission cannot correctly value the Saratoga spring properties or properly or, with safety to the State, proceed to acquire them or any of them, while, by such unlawful pumping, the apparent value and output of some of the properties are artificially and unfairly exaggerated and of others of them artificially and unfairly diminished. Valuations for payment out of the State treasury ought to be fixed on a basis of normal obedience to law on the part of owners of the properties, not on a basis of abnormal violation of law. Nor ought the State, in our opinion, to buy a lawsuit or group of lawsuits. Our conclusion, therefore, is not, either by purchase from voluntary sellers or by condemnation, to commit the State to expenditure for purchase of springs at Saratoga until the existing law with respect to their use shall be enforced, or, at least, until the validity and effect of the act of 1908 shall be settled. So that, when the State shall buy a spring or property, it will be known to what extent it can be protected under the law from destruction or impairment by neighboring owners or what rights its ownership gives to pump water and gases from other springs. When the State buys it should in short know precisely what it gets. Especially unwise and unfit would it, in our opinion, be for the Commission to attempt a purchase from owners the value of whose property in chief part depends on practices now judicially condemned as unlawful spoliation of other interests.

In one case an owner states to the Court, as appears in the copy of his printed papers, that the value of his property, forty-nine parts out of fifty, depends on his continuance of such practices.

If the policy approved by the Governor and Legislature in the enactment of the statute of 1909, and the considerations which dictated it, be sound, the obstruction of the procedure of our Commission by such unlawful practices is injurious, and even calamitous, to the State, as well as to the prosperity of Saratoga.

In the past, and for very many years, Saratoga was by far the most important health and summer resort in the United States. The therapeutic repute of its waters extended throughout this country and Europe. Like Niagara Falls Saratoga brought to the State great numbers of visitors; and, apart from the consideration of health and pleasure of the citizens of New York, such repute of its waters was not only of very great or even vital importance to Saratoga, but of appreciable importance to the business interests of the State. There seems to be no doubt that these advantages to the State and to Saratoga itself have, in late years, been largely lost by reason of the interference with the natural flow of the waters by those desiring to make some springs profitable at the expense of others. It is the view of some experts — although this view we are not yet prepared to accept — that, if the present situation continue much longer, the reputation of the springs at Saratoga will be entirely lost.

It has been judicially held by several courts so far as to sustain preliminary injunctions that the springs of Saratoga are intimately related to one another, and that excessive pumping of any one tends to the injury or destruction of others; and, by the act of 1908, the Legislature determined that public regulation of the uses of these waters was necessary. By the act of 1909 the State has gone further, and has determined that, to the extent of at least \$600,000, it is the interest of the State at large not only to protect but to acquire these springs. But, as we have pointed out, such protection cannot be accorded either to the State or to Saratoga until the constitu-

tional part of the act of 1908 shall be enforced. We, therefore, respectfully ask your attention to the present status of the efforts at such enforcement in order that you may determine whether or not public interests require some further intervention by and for the State itself.

After the passage of the act of 1908 a committee of citizens of Saratoga, which had been representing its public sentiment with respect to the protection of its mineral springs, asked Frank H. Hathorn, the owner of a well known spring, to bring, as he did in Saratoga County, a suit against the Natural Carbonic Gas Company to enjoin that Company from excessive pumping in violation of the act of 1908. Upon the request of the committee, the Attorney-General also instituted in Albany County, in the name of the People of the State for a like purpose, six other suits, one against the Natural Carbonic Gas Company, another case against the New York Carbonic Gas Company, another against the Geysers Natural Gas Company, another against the Lincoln Spring Company, another against Harry M. Levensten and another against Mary A. Patterson. In all of these suits, pending final judgments, preliminary injunctions were granted against excessive pumping. Upon appeal, the Appellate Division in the Third Judicial Department sustained the injunction in the Hathorn case, but held that, since, in the suits brought by the Attorney-General, no undertaking in behalf of the defendants' possible damages had been given, the question of issuing preliminary injunctions in those suits should wait the final ruling of the Court of Appeals upon the constitutionality of the law.

The Carbonic Gas Company thereupon appealed in the Hathorn suit from the order of the Appellate Division continuing the injunction against it; and on February 23, 1909, the Court of Appeals sustained the constitutionality of the act of 1908 so far as it forbade the acceleration of the flow of percolating waters or natural carbonic acid gas from wells bored into the rock by pumping or any artificial contrivance, when the object of so doing was to collect the carbonic acid gas for the purpose of marketing the same. The Court accordingly affirmed the injunction order, holding that a suffi-

cient case, within the constitutional prohibition of the statute, was alleged against the Natural Carbonic Gas Company. It might have been hoped that, upon the decision of the court of last resort of the State, the injunction would have been obeyed. But it would seem that the Natural Carbonic Gas Company and defendants in other suits instituted in the name of the people have gone on with their pumping in entire disregard, not only of the statute, but of the injunction thus affirmed by the Court of Appeals. A motion was then made in the Supreme Court to punish the defendant for contempt in violating the injunction in the Hathorn case; and the court adjudged the defendant guilty of contempt and imposed a fine. Notwithstanding this the violation of the injunction continues open and unchecked. In this respect law and order seem to be suspended at Saratoga.

The injunctions in the cases brought in the name of the people have not been reinstated, although, as we understand the ruling of the Appellate Division, they would be proper if and when the Court of Appeals should render the decision which the court did render in February last. There is dispute whether or not the failure to try these cases were due to inaction on the part of the plaintiff or defendants. However that may be, the defendants, as we understand, have answered in the suits; and the suits were ready for trial as early as May last. In the Hathorn case, the Natural Carbonic Gas Company had interposed a demurrer which prevents a final judgment in the case until the demurrer shall be argued. But that argument can be had at any time, and would seem to be a mere formality since the Court of Appeals expressly held that the complaint in the case set out a cause of action both under the act of 1908 and under the law as it was before 1908.

After the Natural Carbonic Gas Company was adjudged to be in contempt, and on the 2nd instant, an application was made to Mr. Justice Peckham of the Supreme Court of the United States for an order staying any enforcement or attempt to enforce the act of 1908 or the prosecution of any action or actions against that Company to compel obedience to the statute or to compel obedience to any order or judg-

ment made by any court or judge of New York for the purpose of compelling its obedience to that statute and restraining that Company — “ from in any wise obeying, observing or conforming to the provisions, injunctions and prohibitions of the said statute, and from in any wise obeying, observing or conforming to the provisions, prohibitions, injunctions and commands of any order or orders made by any court of the State of New York or by a judge thereof, or in any such action for the purpose of enforcing or compelling obedience to said statute.”

This application was made in the suit of Stuart Lindsley, claiming to be the holder of bonds and stock of the Gas Company; and he brought in as defendants, not only Mr. Hathorn and the members of the Saratoga Citizens' Committee, but likewise the Attorney-General of the State. The plaintiff sought, among other things, to prevent him, the chief law officer of the State from any attempt to enforce a statute adjudged by its court of last resort to be constitutional. And this application was further to prohibit the Gas Company from obeying that statute — that is to say, it was in effect for a mandamus upon the Company compelling it to commit what, according to the law of the State, was a crime. This application has been promptly denied by Mr. Justice Peckham; and the Circuit Court of the United States, in which the suit had been brought, had already sustained demurrers to the complaint. So that, for the present, the suit in the federal court presents no obstruction to the orderly administration of justice within the State, and appears to be useful only to enable the Supreme Court of the United States to determine whether any provision of the federal constitution is violated by the act of 1908.

The best solution of these legal difficulties would seem to be to procure, as speedily as possible, judgments in the suits brought in the name of the people of the State to obtain injunctions, and then, if they shall be awarded, rigorously to enforce them. The trials of the suits are likely to be had together, and would, it is probable, occupy the whole of a single term of the court. But in view of the very thorough consid-

eration by the Supreme Court at Special Term and in the Appellate Division and by the Court of Appeals of the principal questions involved and in view of the full presentation upon the motions for preliminary injunctions of the facts and arguments relied on by both sides, we may hope that final judgments would be reached soon after the trial and that, if the injunctions sought should be granted, they would be put into undoubted and effective force.

The Attorney-General has thus far, as we understand, appeared only because of the request of the Saratoga Citizens' Committee; and, although he has deemed it proper to bring suits for the people, he has thus far very properly considered them as brought in main substance to enforce special rights or rights local to Saratoga. I understand that his view has been that expense in those suits should be met by the Saratoga Committee or those in co-operation with it. That Committee, has, however, as we are informed, already borne the considerable expense of the litigations thus far; and the able counsel employed by it, Messrs. Lester and Rockwood, have, with great public spirit and successfully, done a large amount of work for unsuitably inadequate compensation. If, however, the enforcement of law in this matter be of moment to the whole State, as, in effect, the acts of 1908 and 1909 declare it to be, then we submit, for the consideration of yourself and the Attorney-General, whether he might not now take up these suits as suits primarily for the State itself, and to be conducted as matters in which the State itself has a primary and dominant interest. It seems to us that it would be suitable that the State itself should bear the expense of compensating experts, or other expense incidental to the progress of these suits, when they are prosecuted for the benefit of the State at large. But if this expense cannot be otherwise provided and it should be deemed proper that the expense should be met in that way, we believe that the citizens of Saratoga, represented by the Citizens' Committee, would in all probability, by subscription, to some extent at least, provide the necessary moneys.

We venture also to ask your consideration of the question whether it may not be wise to appoint, for early September, an extraordinary Special Term of the Supreme Court to be held in the County of Albany—in which county the suits brought by the people are now pending—in order that, without obstruction or delay by other business, those cases may be tried and any other judicial procedure had suitable to the enforcement of the act of 1908.

Mr. Godfrey of the Commission is absent on the Pacific coast, so that he does not subscribe this letter. We are confident, however, from our conferences prior to his departure, that he would, if here, concur in its principal statements and suggestions.

Respectfully yours,

(Signed) SPENCER TRASK.

By E. M. S.

EDWARD M. SHEPARD.

PROGRESS OF THE SUIT

STATE OF NEW YORK — STATE RESERVATION COMMISSION AT
SARATOGA SPRINGS

November 17, 1909

To His Excellency, The Honorable CHARLES E. HUGHES,
Governor, Executive Chamber, Albany, New York:

SIR.—In our letter to your Excellency of 20th July, 1909, we set forth the situation of the litigations then pending with respect to the mineral springs at Saratoga and asked your intervention to speed to a conclusion the suits brought by the Attorney-General in behalf of the State. After conference with the Attorney-General, you ordered an Extraordinary Special Term of the Supreme Court for the 20th day of September last; and at that time the six suits brought by the At-

torney-General against the Geysers Natural Carbonic Acid Gas Co., New York Carbonic Acid Gas Co., Lincoln Spring Co., Natural Carbonic Gas Co., Mary Augusta Patterson and Harry M. Levengsten, were brought to trial before Mr. Justice Andrews. Those were suits brought under the authority of chapter 429 of the Laws of 1908 to enforce the third provision of that act which the Court of Appeals had, in the Hathorn case against the Natural Carbonic Gas Co. (194 N. Y. 326), held to be constitutional. That was a prohibition against — “pumping, or otherwise drawing by artificial appliance from any well made by boring or drilling into the rock, that class of mineral waters holding in solution natural mineral salts and excess of carbonic acid gas, or pumping, or by any artificial contrivance whatsoever in any manner producing an unnatural flow of, carbonic acid gas issuing from or contained in any well made by boring or drilling into the rock, for the purpose of extracting, collecting, compressing, liquefying or vending such gas as a commodity otherwise than in connection with the mineral water and the other mineral ingredients with which it was associated.”

Mr. Justice Andrews rendered his judgment on 24th September last in the suits of the people against all of the companies engaged in pumping and vending carbonic acid gas. He held that the answers of the companies admitted every element of the pumping made unlawful and prohibited by such constitutional provision of the act of 1908. He further held that it was unnecessary that there should be proof that the pumping had injuriously affected any other spring than that of the defendant company or that the pumping resulted in an acceleration of the natural flow; and he excluded evidence offered by the defense which it was stated would show that it did not in fact injure any such other spring. He held that the pumping from any well bored into rock mineral waters holding carbonic acid gas in solution, or in any way producing unnatural flow of such gas from any such well with the intent to extract or sell the gas from the water as a commodity otherwise than in connection with the mineral water, was unlawful under the act of 1908 without reference to the effect of the pumping upon other springs or the fact of ac-

celeration of flow. The trials were, therefore, very brief, consisting almost entirely of legal rulings by the court upon the admissions made by the companies in their answers.

The Appellate Division affirmed these judgments without argument or written opinion; and the cases were taken speedily to the Court of Appeals, where they were argued in October last. That court has not yet rendered its decision. If it shall affirm the decisions of Mr. Justice Andrews, we understand that the defendants will carry the cases to the Supreme Court of the United States upon the claim that the provision of the act of 1908 was wrongly held constitutional by the court in the Hathorn case and that in fact it violates the Federal Constitution. If, on the other hand, the court shall reverse Mr. Justice Andrews, the reversal will seemingly necessitate the taking of evidence on the question whether or not the pumping of the companies does in fact injure the springs of other owners or whether it produces an acceleration of flow.

In our letter of July last to your Excellency, we pointed out that the injunction against pumping granted by the Supreme Court and affirmed by the Court of Appeals, in the Hathorn case, was notoriously and continuously violated in spite of at least one adjudication for contempt in the disobedience. And we ventured to say that, in this respect, "law and order seemed to be suspended at Saratoga." After Mr. Justice Andrews rendered his judgments forbidding pumping, it was announced that the injunctions would be obeyed, as the injunction order in the Hathorn case had not been; but the asserted obedience was to the extent — so it was stated — that the carbonic acid gas would not be extracted from the water pumped or sold. But the pumping of the mineral water containing the gas continued undiminished — as we are informed and as seems to be notorious at Saratoga Springs — the claim being made by the defendants that the injunction did not prevent their pumping if they did not extract to sell the gas or make any profit from their pumping but merely let it run to waste upon the ground. If the statements in behalf of the defendants that the injunctions have been obeyed so far as they

prohibit the pumping of water for the purpose of extracting the gas for sale be accepted as true, there remains, nevertheless, the extraordinary situation that the pumping goes on undiminished. The quantity of mineral water pumped is stated to be ten times the natural flow of all the other springs in Saratoga taken together. And, of course, the injury which, according to the meaning of the act of 1908, such pumping means to the interest of the State and Saratoga Springs, is undiminished.

Even if, as it is claimed, the pumping be within the technical letter of the law, none the less it puts law and order to derision. The real and substantive purpose of the act of 1908 is none the less frustrated. What the State really sought in its suits was to prevent pumping of a character which, whether or not expressly shown to be injurious to other specific springs, the Legislature had held to be injurious to any group of mineral springs like that at Saratoga. The Legislature in preparing the act of 1908, and the Attorney-General in bringing suits under that act, did not imagine the seemingly improbable contingency that any person or company would be at the pains and expense of artificially forcing a flow of mineral water unless to make merchandise of it or of its products. It was not, therefore, thought necessary to forbid or prevent pumping for purposes of sheer and mere waste.

But that very improbable contingency is now realized so that, whatever may be the decision of the Court of Appeals upon the judgment rendered by Mr. Justice Andrews, the pumping on a great scale by all these companies is to continue, if not for business profit, then for waste. In the opinion of the law-making power of the State, such pumping is inconsistent with fit administration of the springs and injurious to the interest of Saratoga Springs and of the State. If these companies have the right which they now assert to pump for sheer waste, no matter what injury may be inflicted upon other springs or upon the village of Saratoga Springs or the State, then that right ought to be settled and definitely known. The property of these companies would then have a value in their very ability to inflict damage on other properties; and in case

the State should purchase their properties the companies could practically exact a higher price because of that right. And in that case, the properties which these companies have the right to injure would be so much the less valuable. It may, therefore, well be that the State, if it is as we hope to become the owner of the springs at Saratoga, is not pecuniarily concerned with the question whether the property of these companies shall be demonstrated to be more valuable by the reason of the right of its owners to pump, or less valuable through the absence of such right.

Nor do we suppose our Commission is interested to have any of the litigations decided against or for the pumping companies. But it is clearly to the interest of the State and of the cause committed to our Commission—and for the reasons stated to your Excellency in our former letter,—that, before the State makes any large investment in purchase of spring rights, the questions of the pumping rights existing in favor of these companies or other owners should be promptly and conclusively set at rest. When we wrote our former letter we did not imagine that the right to pump for mere waste on the ground could or would be asserted, and we therefore assumed that the decision of the suits then pending brought by the State to enforce the constitutional prohibition of the act of 1908 would sufficiently determine the questions upon whose determination must depend the effort of the State to acquire the spring properties at Saratoga Springs, and to restore their former great prestige.

It now seems, however, that in that respect we were mistaken. In whatever way the suits now in the Court of Appeals may be decided, it is necessary by further suit to test the question whether spring owners at Saratoga may pump water whether for sale or sheer waste. It may be that the Legislature will deem it wise by further enactment to amplify in this respect the constitutional prohibition of 1908. But at present it would seem that pumping for sheer waste can be prevented or the question of the future right determined, only in a suit brought upon common law right by an owner whose proprietary interests are injuriously affected by such pumping

for waste. And by a recent acquisition of an interest in spring rights at Saratoga, the State has come into a situation where it may raise this question.

On the 13th inst., pursuant to the provisions of the act of 1909 under which we are acting, our Commission duly filed in the offices of the Secretary of State and of the Clerk of Saratoga County maps duly certified by the State Engineer and Surveyor of the well known Hathorn property on Spring, Putnam and Patterson streets in Saratoga with a certificate of an intention on the part of the State to acquire an undivided one-tenth interest in that property. And on the same day the owners of the property, Emily H. Hathorn and Frank H. Hathorn and wife, by deed conveyed to the State such undivided one-tenth interest, the price to be paid being fixed at the sum of \$20,000. This property is one of the most important of the properties at Saratoga and situate at the center region of the village, where it would be natural and practically necessary that the State should begin its acquisition. The entire property is, in our opinion, worth as much as \$200,000; and the State will not, in our opinion, lose by this investment of \$20,000, however the law shall be settled as to pumping whether for sale or for waste; and even if the Hathorn spring must continue to suffer from the excessive pumping by the companies enjoined by Mr. Justice Andrews. Moreover acquisition by the State of this Hathorn interest is in the direction of the general acquisition of spring rights at Saratoga contemplated by the act of 1909. For reasons stated in our former letter, we should have preferred to delay the investment of any part of the \$600,000 now at the disposition of the Commission until the litigations were out of the way and the rights as to pumping authoritatively adjusted. But, since the Legislature has declared the policy of the State in favor of its general and immediate acquisition of spring rights at Saratoga, it seemed clearly to be the interest of the State that it should begin the acquisition, even in advance of such final adjudication, if an acquisition, not involving the investment of any great part of the \$600,000, should enable the State to speed the adjudica-

tion and more quickly end the lamentable paralysis at Saratoga Springs. The State's ownership of an undivided part of the Hathorn spring, which has been shown to be injuriously affected by the pumping of the companies now under injunction, enables it to test the question at common law as well as under the act of 1908, of the right of those companies to carry on their enormous pumping whether for profit or for mere waste.

We have, therefore, most respectfully, to ask the intervention of your Excellency with the Attorney-General to bring such suit or suits as may be necessary in behalf of the State as a proprietor to prevent the pumping for sheer waste now carried on by the companies now under injunction. If you and the Attorney-General shall approve such suit and it shall be brought, we beg to submit, as we did in our former letter, that a speedy determination of the suit is of so much importance to the State that an Extraordinary Special Term of the Supreme Court for its trial might advantageously be appointed as soon as the pleadings are in.

In conclusion, we may perhaps refer to another reason why, in the public interest, such a suit should be brought by the State and speedily decided. It is impossible for any one familiar with the situation at Saratoga Springs not to suspect — perhaps impossible not to believe — that the real motive on the part of the gas companies for continuing such pumping for sheer waste is to prevent the public disclosure of the effect of their pumping upon other springs which would follow the cessation of the pumping. It is true that in behalf of the companies an excuse is suggested for their continued pumping and wasting of the water, that their own springs may suffer, or perhaps be lost, if the pumping were stopped. If this excuse should be accepted, it would only emphasize the proposition that the flow of mineral water of which these companies avail themselves is not a natural, but a forced flow. We must frankly say that we find it very difficult to accept that excuse. We should hope, therefore, that the Attorney-General, if he should deem it proper, would, in the suit or suits which he might bring for the State as a proprietor,

speedily obtain an injunction preventing the pumping for sheer waste, which seems to come measurably near to an affront to the administration of law and justice.

This letter is not signed by Mr. Godfrey because of his absence in Iowa. He has, however, approved the substance of the communication, and upon his return will — we think, without doubt — advise your Excellency of his concurrence.

Respectfully yours,

(Signed) SPENCER TRASK,

(Signed) EDWARD M. SHEPARD,

*Commissioners of the State Reservation at
Saratoga Springs.*

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